STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

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The State of Minnesota,
by Hubert H. Humphrey, III,
its attorney general,
and
Blue Cross and Blue Shield
of Minnesota,

Plaintiffs,

vs. File No. C1-94-8565

Philip Morris Incorporated, R.J.
Reynolds Tobacco Company, Brown
& Williamson Tobacco Corporation,
B.A.T. Industries P.L.C., Lorillard
Tobacco Company, The American
Tobacco Company, Liggett Group, Inc.,
The Council for Tobacco Research-U.S.A.,
Inc., and The Tobacco Institute, Inc.,

Defendants.

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DEPOSITION OF MARTYN C. GILBEY

Volume I, Pages 1 - 287

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(The following is the deposition of MARTYN C. GILBEY, taken pursuant to Notice of Taking Deposition, under Rule 30.02(f), at the offices of Lovell White Durrant, 65 Holborn Viaduct, London, England, commencing at approximately 8:32 o'clock a.m., July 21, 1997.)

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P R O C E E D I N G S

(Witness sworn.)

MARTYN C. GILBEY

called as a witness, being first duly sworn, was examined and testified as follows:

ADVERSE EXAMINATION

BY MS. WIVELL:

Q. Good morning, sir.

A. Good morning.

Q. Would you please introduce yourself to the ladies and gentlemen of the jury.

A. My name is Martyn Christopher Gilbey, and I'm employed by British-American Tobacco Company Limited.

Q. And what is your position at British-American Tobacco Company?

A. I'm a litigation counsel.

Q. What do you do there as a litigation counsel?

A. My job is to manage the litigation to do with product liability.

Q. I -- I'm going to tell you that I have a small hearing problem, and if from time to time I ask you to repeat, it's because I -- I have trouble hearing; so please do not be offended if -- if --

A. I won't be offended.

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Q. -- if I ask you.

Have you been deposed before, sir?

A. No.

Q. All right. Now you and I may have a problem, and it's developed already, and that is: Do you understand that you have -- that only one of us can talk at a time and that you should probably wait until I'm done before you start your answer?

A. Okay.

Q. All right. How long have you been employed by British-American Tobacco Company?

A. I joined them in March 1996.

Q. (Coughing.) Pardon me.

Is there a short phrase that we can use in referring to your employer other than saying "British-American Tobacco Company?"

A. BATCO.

Q. Is that how it's referred to in-house?

A. Very often.

Q. All right. And that's B-A-T-C-O?

A. That's right.

Q. Can we agree that when we say BATCO, we're referring to your employer, British-American Tobacco Company?

A. Yes, that would be fine.

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Q. Thank you.

How long have you worked for BATCO?

A. Since March 1996.

Q. All right. And where did you work before that?

A. I worked for Eagle Star Insurance.

Q. And Eagle Star is one of the BAT Group of companies; isn't it, sir?

A. It is a subsidiary of British -- of B.A.T Industries.

Q. All right. Now B.A.T Industries is the parent company of BATCO?

A. Correct. I think that's correct. I'm not sure the actual chain, but it's -- it's a subsidiary, yes.

Q. All right. And can we agree --

Or is there a shorter phrase for B.A.T Industries that is sometimes referred to?

A. To be accurate, I think we ought to refer to B.A.T Industries.

Q. Okay. It's not called B.A.T. from time to time?

A. It is, but it can sometimes be very confusing.

Q. All right. Well I'll try very hard to refer to it as B.A.T Industries then. And just so we're --

Just so the record is clear, Eagle Star is a subsidiary corporation of B.A.T Industries?

A. Eventually, yes. I mean the actual chain is --

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is -- is not direct, but I think if --

We can recognize that there is a -- a chain. But it's a subsidiary company, yes.

Q. Who do you report to, sir?

A. I report to the senior litigation counsel.

Q. Who is?

A. Neil Withington.

Q. Have you always reported to Mr. Withington?

A. Yes, I have.

Q. What are your responsibilities as litigation counsel for BATCO?

MS. McGARRY: Objection, asked and answer. You may answer.

A. I --

My job is to manage part of the product-liability litigation.

Q. What product-liability litigation?

A. Primarily smoking and health.

Q. Is there smoking-and-health litigation in the U.K.?

A. There is, yes.

Q. Does your job also include responsibility for managing the smoking-and-health litigation in the United States?

A. It does.

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Q. How long have you had that responsibility?
A. Since the time I joined BATCO.
Q. Was there someone with BATCO prior to the time you assumed that responsibility who had that job?
A. Yes, there was.
Q. Who was that?
A. Philip Scourfield.
Q. And how long had he held that position?
A. I think it was six to nine months prior to myself.
Q. All right. And was there someone before Mr. Scourfield who held the position as or had the responsibility for being responsible for litigation in smoking-and-health-related cases?
A. No, not to my knowledge.
Q. Where actually are your offices, sir?
A. In Staines.
Q. Have they always been in Staines?
A. Since I've been there.
MS. McGARRY: Objection.
Q. All right. Prior to your taking this position, where were the offices -- I'm sorry. Strike that.
Are you in the legal department for BATCO?
A. Part of, yes.
Q. All right. Has the legal department's offices

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been in Staines --

Are the legal department's offices in Staines?

A. Yes, they are.

Q. How long have they been in Staines?

A. I believe since 1992.

Q. And where were they before that?

A. I believe they were in Millbank, which is in central London.

Q. So if we see references to Millbank in the legal context in various BATCO documents or various B.A.T Industries documents, would it be referring to the BATCO legal department in Millbank?

MS. McGARRY: Objection.

A. There's -- Millbank is --

Millbank is an address for both the offices as they were prior to 1992. The address was Millbank, Central London. The offices in Staines are also called Millbank. They adopted the name, although not the actual address. So there's -- there's confusion there.

Q. All right. So if we -- would it -- strike that.

Would it be fair to say that if we saw an address of Millbank in reference to legal matters, that it's talking about the BATCO legal department?

MS. McGARRY: Objection.

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A. Yes.
Q. Is there any other legal department that has -- has been at Millbank?
A. I don't believe so.
Q. All right. When you took your position as litigation counsel for BATCO responsible for smoking and health matters, how did you learn what your responsibilities would be?
A. From those that I -- I was in discussion with about the job.
Q. And who was that?
A. Neil Withington and Mick McGraw.
Q. Who is Mr. McGraw?
A. He's the legal director for British-American Tobacco.
Q. And what is Mr. Withington's position?
A. He is the senior litigation counsel.
Q. And does Mr. Wittingan -- I'm sorry.
Does Mr. Withington have responsibility for smoking-and-health-related litigation?
A. Yes, he does.
(Discussion off the stenographic record.)
(Plaintiffs' Exhibit 468 was marked for identification.)
BY MS. WIVELL:

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Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 468, it is a notice of taking deposition for this deposition; isn't it, sir?
A. That's correct.
Q. Have you seen this document before?
A. I have.
Q. When did you first see it?
A. Probably shortly after the plaintiffs served it.
Q. And just so we're clear here, this notice is to B.A.T Industries P.L.C.; correct?
A. Correct.
Q. All right. And it asks that B.A.T Industries produce a person -- I'm sorry. Strike that.

It says that B.A.T. shall produce one or more representatives who shall be qualified to testify as to matters known or reasonably available to B.A.T. concerning the collection and production of documents produced in the above-captioned litigation; correct?
A. Well it says designate, not produce. But yes.
Q. Oh, I'm sorry. Yes. It says B.A.T. shall designate; correct?
A. Correct.
Q. All right. Do you understand that the deposition we're taking here today is pursuant to Rule 30.02(f) of the Minnesota Rules of Civil

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Procedure?

A. I do.

Q. And do you understand that Exhibit 1 requires, pursuant to that rule, B.A.T Industries to produce a person qualified to testify about these matters that are listed in Exhibit 468?

A. Yes.

Q. All right. Do you understand that the deposition notice is to the corporation, British-American -- I'm sorry, strike that.

Do you understand that the deposition notice is to the corporation B.A.T Industries P.L.C.?

A. Yes.

Q. And do you understand that you have been designated as a corporate representative of B.A.T Industries to speak on its behalf at this deposition?

A. Yes.

Q. And you understand that at this deposition you are speaking for B.A.T Industries P.L.C.?

A. Yes.

Q. And you have consented to speak for B.A.T Industries P.L.C.?

A. I have.

Q. And you understand your testimony here today is binding on B.A.T Industries P.L.C.?

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A. I understand.
Q. Do you understand that the questions which you give -- I'm sorry. Strike that.
Do you understand that the answers which you give in this deposition to the questions I ask must be answered fully based not only on what you know personally, but also on knowledge available to B.A.T Industries?
A. I do.
Q. And do you understand that the answers which you give in this deposition to the questions I ask must be answered completely based not only on what you know personally, but on knowledge available to B.A.T Industries?
A. I do.
Q. And do you understand that the question -- I'm sorry. Strike that.
Do you understand that the answers you give here today are to be based not only on what you know personally, but what you also learned in preparation for this deposition?
A. I understand.
Q. Is there anyone else who's better qualified or more suitable to testify regarding the subjects that are listed in Exhibit 468?

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A. I don't believe so.
Q. Now from time to time I'm going to be referring to the lawsuit brought on behalf of the State of Minnesota and Minnesota Blue Cross and Blue Shield against B.A.T Industries, BATCO and BATUKE as "this case." Can we agree that when we refer to "this case," that's what we mean?
A. Yes.
Q. All right. Can we also agree that unless my questions ask for information about document collection or production in another cigarette or smoking-and-health-related case, that my questions all refer to document collection and production in the lawsuit brought on behalf of the State of Minnesota and Blue Cross Blue Shield?
A. Yes.
Q. All right.

(Plaintiffs' Exhibit 469 was marked for identification.)

BY MS. WIVELL:
Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 469, this is a part of plaintiffs' first request for production of documents to B.A.T Industries relating to the jurisdiction over B.A.T Industries; correct?

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A. Correct.
Q. All right. And I have included the section of definitions that occurs on page three. Do you see that, sir?
A. I do.
Q. Can we agree that in this case, when I refer to the word "document," it refers to all of the different categories of things listed under the definitions of document on page three, point one of Exhibit 469?
MS. McGARRY: I'm going to object to the degree it differs from the agreements reached by the parties.
A. Yes.
Q. Thank you.
Now sir, I asked you just a moment or two ago if there was anyone else who's better qualified or more suitable to testify regarding the subjects that are listed in Exhibit 468 than you, and you said "I don't believe so." Do you recall that?
A. Yes.
Q. All right. Sir, isn't it a fact that you were not listed among the persons most knowledgeable when B.A.T Industries first filed its interrogatory responses in this case?

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A. Yes.

MS. McGARRY: Just give me time to object to the question. I object, the question is ambiguous. It just says "most knowledgable."

MS. WIVELL: I object to your violation of the court's order concerning speaking objections.

MS. McGARRY: It's not a violation.

(Plaintiffs' Exhibit 470 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 47 --

THE REPORTER: 470.

MS. WIVELL: Yes. Let me state it again.

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 470, these are the responses of B.A.T Industries P.L.C. to plaintiffs' first set of interrogatories to B.A.T Industries relating to jurisdiction over B.A.T Industries; correct?

A. Correct.

Q. Now if we turn to the fifth page of the document, Interrogatory No. 1 asks B.A.T Industries to identify the individuals with the most knowledge at the present time with respect to the location and organization and collection of documents relating to

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smoking and health at your company. Do you see that, sir?

A. Yes.

Q. And the interrogatory response that B.A.T Industries filed listed David Wilson, the company's secretary, as the individual most knowledgeable at the present time with respect to the location, organization and collection of documents relating to smoking and health; correct?

A. Correct.

Q. You are not listed on that interrogatory; are you, sir?

A. No.

Q. If we turn to page 14 -- I'm sorry.

If we turn to page 13 of Exhibit 470, please say -- see that that interrogatory answer is dated June 21st, 1995; right?

A. Right.

(Plaintiffs' Exhibit 471 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 471, this is the first amended response of B.A.T Industries P.L.C. to plaintiffs' first set of interrogatories to B.A.T Industries

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relating to jurisdiction over B.A.T Industries; correct?

A. Correct.

Q. And if you turn to page five, we see that B.A.T Industries again answered Interrogatory No. 1, this time supplementing its interrogatory response; correct?

A. Correct.

Q. And there again the interrogatory asks that B.A.T Industries identify the individuals with the most knowledge at the present time with respect to the location and organization and collection of documents relating to smoking and health at your company; right?

A. Correct.

Q. And you are not among the individuals who are listed in response to Interrogatory No. 1; are you, sir?

A. No.

Q. David Wilson, the company's secretary of B.A.T Industries, is listed as the -- one of the persons most knowledgeable; right?

A. Right.

Q. And then Dr. Frank S. Marsh is listed; right?

A. Right.

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Q. Who is Dr. Marsh?
A. Frank Marsh is the records manager for BATCO.
Q. And what is a records manager?
A. One of his responsibilities is the maintenance of the document-retention policy.
Q. You are not listed among the persons most knowledgeable in response to this interrogatory; are you, sir?
A. No.
MS. McGARRY: Objection, asked and answered.
Q. What's the date of Exhibit 471, sir?
A. Appears to be September the 14th, 1995.
(Plaintiffs' Exhibit 472 was marked for identification.)
BY MS. WIVELL:
Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 472, this is the second amended responses of B.A.T Industries P.L.C. to plaintiffs' first set of interrogatories to B.A.T Industries relating to jurisdiction over B.A.T Industries; correct?
A. Correct.
Q. And this document was -- is dated February 18th, 1997; right?

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A. Correct.
Q. Now this document does list you as a person -- as the person most knowledgeable at the present time with respect to the location, organization and collection of B.A.T Industries and BATCO documents relating to smoking and health; right?
A. Right.
Q. Now sir, I notice that you were not listed among the first two interrogatory answers but are listed on Exhibit 472; right?
A. Right.
Q. Now when was the collection and production of B.A.T Industries and BATCO and BATUKE documents, when did that take place?
MS. McGARRY: Could I hear the question again?
MS. WIVELL: Let me rephrase it.
Q. When did the collection of B.A.T Industries, BATCO and BATUKE documents take place?
MS. McGARRY: Objection, ambiguous.
A. They started at various dates. The -- the very earliest date of collection commenced in the mid-'80s, in 1987, of BATCO research and development documents. The collection of B.A.T Industries documents started in late 1994. There was a

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resumption of collection of BATCO documents, I think it was around September 1995. And we've continued on.

Q. Would it be fair to say -- no, strike that.

Were you involved in the 1987 collection of BATCO documents?

A. No.

Q. Were you involved in the 1994 collection of B.A.T Industries documents?

A. No.

Q. Were you involved in the September 1995 resumption of the collection of BATCO documents?

A. No.

Q. Is there anyone who knows more about the collection of responsive documents in this case than you do?

A. I don't believe so.

Q. If I ask you questions about the document collection in this case which you cannot answer, who would you go to to get the answer?

MS. McGARRY: Objection.

A. Depends on the question.

Q. Well who would you go to first off?

MS. McGARRY: Objection, calls for speculation.

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A. Depends entirely on the question.
Q. Now I notice that you are not among the persons listed in Exhibit 470 and 471, but your name appears for the first time in February 18th, 1997 as the person most knowledgeable at the present time. How did you become knowledgeable concerning the collection and production of documents in this case?
A. When I joined BATCO, one of my prime responsibilities was the production and collection of documents for the Minnesota case, so over that period since that has been one of my prime focus, and I've gained knowledge since that time.
Q. Just refresh my recollection again. When did you join BATCO?
A. March 1996.
Q. Now Mr. Wilson is still with B.A.T Industries; isn't he, sir?
A. Yes, he is.
Q. Did you speak with him in preparation for your deposition today?
A. No.
Q. Despite the fact that he is listed in the first two interrogatory answers concerning collection and production, Exhibits 470 and 471, you did not even speak to him about the subject matter of this

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deposition today?

MS. McGARRY: Objection, asked and answered and argumentative.

A. Not specifically in connection with the preparation for the deposition, no.

Q. Have you spoken with Mr. Wilson at all about the collection and production of documents in this case?

A. Since March 1996, yes.

Q. And when did you speak to Mr. Wilson about the collection and production of documents in this case?

A. I don't recall specific dates, but certainly on several occasions.

Q. All right. Tell me what you remember about those specific occasions.

A. Very --

MS. McGARRY: I object, you mischaracterized the witness's answer, but you may proceed.

A. I recall very little. What I'm saying is that since March 1996 I've spoken to David Wilson about these issues from time to time to gain knowledge for myself or to ask specific queries so that today I'm the person here as the -- the one with the most knowledge.

Q. And I'm asking you what you remember of these

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conversations with Mr. Wilson.
A. And I've just said I don't recall the specific conversations.
Q. And I'm saying I don't want you to recall the specifics, I want you to tell me what you remember generally.
A. I really don't remember anything general. I can't recall an instance of a particular subject discussed other than to say it was to do with the production and collection.
Q. How many times did you speak with Mr. Wilson about the collection and production?
A. I really can't recall.
MS. McGARRY: You can't --
MS. WIVELL: You have to wait until I'm done.
Q. Just so we're clear here, you can't recall how many times you spoke with Mr. Wilson about this subject; right?
A. Right.
Q. You can't recall anything that was said during these conversations.
A. Right.
MS. McGARRY: Objection.
Q. Can you recall generally anything that was said

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in any of these conversations?
A. To put it in context, I've spoken to David Wilson in the last 15 or 16 months on many occasions with different subjects -- different issues that have arisen in the course of -- of the Minnesota litigation. I think for that reason I can't recall a specific instance over those several conversations, over primarily document issues, but it would have occurred.
Q. And just so we're clear here, you can correct me if I'm wrong, but when you learned you were going to be the deponent for this deposition, you did not speak with Mr. Wilson in preparation for this deposition.
A. That's correct.
Q. All right. Well let's talk about Mr. Marsh. Mr. Marsh is listed in interrogatory 472, I believe -- no, 471, as the person with most knowledge concerning document collection and production.
MS. McGARRY: Objection, that misstates the exhibit. Doesn't say anything about production, it says collection.
MS. WIVELL: Let me rephrase the question.
Q. Exhibit 471 lists Dr. Frank Marsh as the person most knowledgeable about the organization and

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collection of B.A.T Industries and BATCO documents. Did you speak with Mr. Marsh in preparation for your deposition today?

A. Yes, I did.

Q. All right. How long did you speak with Mr. Marsh?

A. My recollection is that Frank Marsh and I spoke for two or three hours.

Q. When was that?

A. I can't recall the specific date.

Q. And what did you talk about?

A. Primarily we spoke about the document-retention program.

Q. All right. Well what did you talk about concerning the collection of documents in this case?

A. I'm not sure specifically I asked him or needed to ask him questions at that time about the collection and production of documents.

Q. All right. Just so we're clear here, did you talk with Mr. Marsh about the location, organization and collection of B.A.T Industries and BATCO documents relating to smoking and health in this case during that conversation?

A. Yes, in a broad sense.

Q. I'm sorry, "yes" in a what sense?

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A. A broad sense.
Q. All right. Well I'm talking specifically. You said earlier that you talked with him about document retention and -- policies, and I'm asking a little bit different question. Did you, during that two- to three-hour conversation, talk with Mr. Marsh concerning the location, organization and collection of B.A.T Industries and BATCO documents relating to smoking and health in this case?
A. Yes.
MS. McGARRY: Objection, asked and answered.
Q. All right. What did you talk about, apart from the document-retention policy?
A. I believe one of the subjects we spoke about was places from which documents came, to check that. I don't recall specifically any other issues from that conversation, though there may well have been.
Q. How long did you talk about the document-retention policy with Mr. Marsh?
A. The majority of the time that we spent together on that occasion.
Q. Now did you speak with anyone else in preparation for your deposition today?
A. Yes.

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Q. Who?
A. I spoke to some of the team involved from both sets of external lawyers used by B.A.T Industries and BATCO, and also some other employees of BATCO.
Q. All right. Who did you speak to on the team of lawyers concerning document collection and preparation for your deposition today?
MS. McGARRY: Objection.
A. From Lovell White Durrant, I spoke to Graham Livingston, Anthony Kenny, Jeremy Marshall, Richard Lindsay.
Q. Anyone else?
A. I may have spoken to Mark Huleatt-James. That's H-u-l-e-a-t-t-hyphen-James.
Q. Anyone else?
A. I don't recall.
Q. Were there any lawyers other than those from Lovell White Durrant to whom you spoke?
A. Yes.
Q. Who?
A. From Simpson, Thacher & Bartlett I spoke to Pat Bonner, Denise Delgado. I think that's all.
Q. Were there any other lawyers to whom you spoke?
A. I don't recall.
Q. Does that mean there weren't any?

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A. It means I don't recall.
Q. Now sir, you said you spoke to some employees; correct?
A. Yes, that's right.
Q. Who did you speak to?
A. I spoke to Kathy Neaves, and to Brenda St. Paul. I think that's all.
Q. Is there anyone else, apart from the lawyers and the employees, that you spoke to in preparation for your deposition today?
A. No, I don't recall.
Q. Now if there was a question you couldn't answer concerning the decisions as to which responsive documents should be produced in this case and which should not, who would you talk to?
MS. McGARRY: Objection.
A. Can you repeat the question?
Q. Certainly.
If there were a question you couldn't answer concerning the decisions as to which responsive documents should be produced in this case and which should not, who would you talk to?
A. Graham Livingston or Pat Bonner.
Q. And if there were a question concerning whether a particular location had been searched to determine

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whether all responsive documents had been produced, who would you speak to?

A. That question just triggered -- I did -- I also spoke to someone else from Lovell White Durrant, who was Lucy Ward.

Q. All right.

A. And I -- it was triggered because I -- I think I'd go to Lucy Ward on that question, and perhaps to Graham Livingston also.

Q. All right. Now if there were a question about whether a particular document was privileged or not, who would you go to?

A. I would go to Jeremy Marshall and Pat Bonner.

Q. Anyone else?

A. No.

Q. Now I think you mentioned -- well let's start with that last one. On the issue of privilege, you -- I think you said you would speak to Patrick Bonner or Jeremy Marshall; is that right?

And Mr. Bonner is employed by Simpson Thacher?

A. Correct.

Q. And he's a lawyer?

A. Correct.

Q. Jeremy Marshall is employed by Lovell White Durrant?

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A. Correct.
Q. And he's a lawyer?
A. Correct.
Q. Now I think you said, on the issue of who you would check with concerning whether a particular location was searched for responsive documents, you said you'd speak to Lucy Ward?
A. Correct.
Q. Is Lucy Ward with Lovell White?
A. She is.
Q. Is she a lawyer?
A. She is.
Q. When I asked you about whether responsive documents had been produced, I believe you said, correct me if I'm wrong, you would speak with Graham Livingston at Lovell White; is that right?
A. Yes.
MS. McGARRY: Objection, I don't think that was your prior question.
Q. Is he a lawyer?
A. Graham Livingston is a lawyer, yes, --
Q. Okay.
A. -- with Lovell White.
Q. Now you said you spoke to a couple of employees and I forgot to ask you what their positions were. I

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think you said you spoke to Kathy --
A. Neaves.
Q. Neaves.
A. N-e-a-v-e-s.
Q. Thank you.
And what's her position?
A. I'm not sure what her job title is. She assisted me in the -- in the -- in the actual collection of -- of files from BATCO in Southampton and Woking.
Q. What's Woking? What's at Woking?
A. It's one of the BATCO offices.
Q. And you mentioned Brenda St. Paul. What's her position?
A. She has the same responsibilities as Kathy Neaves. She's responsible for collecting files from B.A.T Industries and from BATCO at Staines.
Q. Where is B.A.T Industries located?
A. Windsor House, Victoria Street in Central London.
Q. If someone asked you a question about the collection or production of BATUKE documents that you couldn't answer, who would you go to to answer that question?
MS. McGARRY: Objection.

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A. Frank Marsh or Kathy Neaves.
Q. And Frank Marsh is, I think you said, with Lovell White; right?
A. No, Frank Marsh is a BATCO employee.
Q. Oh, I'm -- I'm sorry, I was looking at Jeremy Marshall. My -- my apologies.
Is there anyone else you spoke to in preparation for your deposition today?
A. I can't think of anyone else at the moment.
Q. Are there any particular documents that you could go to to look at concerning the collection and production of documents in this case; in other words, a set of documents that were generated as part of the process of collecting documents?
A. There's not -- there's not one collection, if that's what you've got in mind, no.
Q. Well are there a number of collections?
A. There are documents generated in the course of the collection process of various types.
Q. All right. Why don't you tell me about the types of documents you understand were generated in the collection process.
A. The process would have started with lists of files emanating from the particular locations.
Q. All right. Who put together those lists?

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A. The file owners.
Q. "The file owners" did you say?
A. Yes, I did.
Q. Are you saying the people whose file cabinets these documents were actually in?
A. That's right.
Q. That's what you mean by "file owners?"
A. That's right.
Q. Okay. All right. In addition to the list of files generated by the file owners, what other documents were generated as part of the collection/production process?
A. Throughout the --
Throughout the process, paper would have been generated to keep track of the files as they went through the -- the discovery process. The file lists were the start. There would have been a record of what files were sent from one location to another, such as from, for example, Southampton to Lovell White, from Lovell White to Guildford, which is where responsive or potentially responsive files were copied. There was, doubtless, paper generated internally within Lovell White.
Q. What --
What kind of paper was generated internally at

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Lovell White concerning this process?

MS. McGARRY: I'm just going to caution Mr. Gilbey to just answer in terms of type, which is what Ms. Wivell asked, and not get into the contents of documents since obviously what was generated by Lovell White is potentially privileged. Just so --

We'll go slowly here to not get into privileged information. You may answer the question.

A. I'm thinking of -- of document -- of -- of paper produced to manage the process, primarily.

Q. And that's what I'm trying to find out about, yes, sir. What kind of documents were generated to manage that process?

A. I don't know the specific documents. I'm speaking of, as I just said, the paper to -- to track and manage the -- the process as it evolved.

Q. Have you ever seen these documents?

A. I would have seen some of them, even if in passing. I wouldn't have been -- I wouldn't have needed to see the -- the detail of them. I don't recall them specifically.

(Discussion off the stenographic record.)

BY MS. WIVELL:

Q. Did you take part in the process where a decision was made whether or not to produce a

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particular document in this case?
A. No.
Q. When did you first learn you were going to be the witness for this deposition here today?
A. Soon after the notice was served.
Q. Who asked you to testify?
A. I was the natural choice. There was -- it's my -- my --
My responsibility is to do with the document production and collection.
Q. All right. But wouldn't it be fair to say that most of the document collection and production was done in this case before you enjoined BATCO?
MS. McGARRY: Objection.
A. Yes.
Q. Who asked you to testify?
A. As I've just answered, I don't recall who -- specifically being asked by anyone. It was -- it seemed part of my responsibility; therefore, it was me who was the natural choice.
Q. All right. Now you --
We've talked about a number of people that you spoke to in preparation for this deposition. Have we covered everybody that you spoke with?
A. I've --

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Oh, I can recall one -- one more Lovell White person, David Graves.

Q. Now you've listed a number of different people from Lovell White. Why did you speak to them about -- I'm sorry, strike that.

Why did you speak to the people from Lovell White concerning the deposition here today?

A. To make sure that I understood all aspects of the production and collection process.

Q. Had they participated in the process?

A. Yes, they had.

Q. Why did you speak with the people from Simpson Thacher?

A. For the same reason.

Q. Because they had participated in the process?

A. That's right.

Q. These other people, Kathy Neaves, Brenda St. Paul, Mr. Marsh, had they all participated in the collection and production process?

A. They had.

Q. All right. Did you conduct any investigation in order to prepare for this deposition?

A. Can you be more specific as to "investigation?"

Q. Well apart from talking to people, did you go out and try and find information in preparation for

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the deposition?
A. Not over and above really what I knew already, save for speaking to those people.
Q. Is there anything else you did to get ready for the deposition?
A. Yes.
Q. What did you do?
A. I read through the interrogatories, the requests for documents, some correspondence that had passed between Simpson Thacher or our -- or -- or B.A.T Industries/BATCO's local counsel and Robins Kaplan.
Q. Anything else?
A. I read through some papers relating to the document-retention policy, and some papers relating to the B.A.T Industries collection.
Q. When you say you read through some papers relating to the B.A.T Industries and B.A.T. -- or BATCO collection, did you -- I'm sorry.
What papers are you referring to?
MS. McGARRY: Objection.
A. They were papers principally authored by Lovell White Durrant which related to the collection process, what should be done and how it should be done.
Q. Was there a scope statement for the collection

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and production in this case?
A. Can you explain the "scope statement" for me?
Q. Yes, a document that explained the type of documents to be collected and gave definitions for them.
A. There was a document which would have -- would have said the doc -- the type of files to be collected. I don't recall any definitions.
Q. Concerning this document that included the type of files to be collected, what information did it contain?
MS. McGARRY: Objection. This is obviously a work-product document. Why don't we first ascertain whether the witness knows the information it contains, see whether we have a problem.
Q. Sir, you reviewed this document as part of the preparation for your deposition today; didn't you?
A. Yes.
Q. All right. You read it completely.
A. Yes.
Q. All right. What kinds of files were included in that document?
MS. McGARRY: Objection.
A. All files that might be relevant to smoking-and-health issues and to jurisdiction, which

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word I'm using in a very broad sense. That is -- that is not a verbatim explanation of what the document said.

Q. Was it --

A. Because I can't recall.

Q. I'm sorry.

Were there various categories?

A. No.

Q. Do you have the document here?

A. No.

Q. Is the document available in the building?

A. I don't know.

Q. You cannot recall what it says -- I'm sorry. Let -- strike that.

Did it say anything else about the files that were to be collected?

A. The document I'm thinking of was one of several pieces of correspondence illustrating what had to be done. I don't recall any more -- a --

A document I have in mind was a note from Lovell White to all B.A.T Industries employees, and I've given you what I can recall about the categories of documents -- or files rather, not documents.

Q. What did this note from Lovell White to the BATCO employees -- I'm sorry. Strike that.

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You said you had in mind a note from Lovell White to all B.A.T Industries employees; correct?
A. I did say that. I think that was wrong. I think the -- the note was -- was authored by Lovell White, but went out under someone else's name, possibly David Wilson.
Q. What did this note to the B.A.T Industries employees say?
A. The note I have in mind was explaining to B.A.T Industries employees that there was a need to collect all files that might be relevant to U.S. litigation, that the files should, therefore, be listed in preparation for collection and review by external lawyers.
(Discussion off the stenographic record.)
Q. Meaning Lovell White and Simpson Thacher lawyers?
A. Certainly meaning Lovell White. I'm not sure at that time whether Simpson Thacher was meant.
Q. What else did the note say?
A. I believe the note went on to say that file lists should be prepared by file owners, and that those lists should be given over for -- for review.
Q. Did it explain more of the type of files that were to be included in these file lists?

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A. No.
Q. Did it say anything more specific than that all files that might relate to smoking and health or jurisdiction should be listed by the file owners?
A. I don't believe so, no.
Q. And to whom did this go?
A. Employees of B.A.T Industries.
Q. Including BATCO and BATUKE?
A. No. I'm thinking only of B.A.T Industries in this point.
Q. All right. Concerning the note from B.A.T. -- or the note to the B.A.T Industries employees, did it say anything else?
A. Not that I can recall, no.
Q. Were the definitions of documents that are contained in Exhibit 469 provided to the B.A.T Industries employees?
A. No.
Q. Was there a similar note that went out to employees of BATCO and BATUKE?
MS. McGARRY: Objection, compound.
A. The answer is --
The answer is no, save that a few years before, a note had gone out about the 19 -- the mid-'80s collection of BATCO and BATUKE. BATCO, not BATUKE.

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Q. I'm not sure I understand then. How did BATCO employees learn that their files were being sought when plaintiffs filed the discovery requests in this case?

MS. McGARRY: Objection.

A. You asked me if I recalled. I -- I don't recall specifically a note going out after the filing, after BATCO being obliged to -- to produce files. That's not to say there wasn't a note.

Q. All right. Who would you go to find out the answer to that question?

A. I'd go to Frank Marsh, probably.

Q. All right. How did BATUKE employees find out that plaintiffs were interested in their files after plaintiffs filed their discovery requests in this case?

A. At that time there was no distinction between the BATCO and BATUKE so far as where files would have been, so the -- the note to -- to BATCO, if a note was indeed sent, would have been to -- would have been to those who were BATUKE employees. There was a -- a blurring of the --

There was a change in organization at, I believe, 1995, so a note to BATCO would have been an all-embracing note.

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Q. Is that because at that time there was a blurring of distinction between BATCO and BATUKE as far as responsibilities?
A. There was an organizational change in 1995.
Q. And what was that change?
A. I can't be specific on that. I can say that the consequence of the change was that a note that went to BATCO would have gone to everybody concerned under BATUKE as well.
Q. Is that because they have the same management?
A. Yes.
Q. Now I think you told me you did not know whether a note had been sent to the BATCO/BATUKE employees at the time plaintiffs filed their interrogatory -- or their interrogatory and requests for production; is that right?
A. I did say that.
Q. All right. Can you find out over lunch and get back to me this afternoon about that?
A. I can do. I'm -- I'm thinking about it. I'm -- I -- I'm sure a note was sent.
Q. All right. But you --
A. I can -- I can now recall a -- a note, yes.
Q. Well can you confirm that --
A. Yes.

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Q. -- over lunch?
A. I can.
Q. Thank you.
All right. Did you review that note in part of your preparation for this deposition?
A. No.
Q. Why not?
A. Because I -- I in fact was, despite my answer, familiar with the note before. I -- I just didn't recall it when you asked.
Q. Is there anything else you did in preparation for your deposition today?
A. I think I've given you the comprehensive answers to what I did.
Q. How much time did you spend preparing for this deposition?
A. Several days. I'd say probably eight or 10 working days.
Q. When did you start getting ready for the deposition?
A. Soon after the notice.
Q. And how long -- I'm sorry. Strike that.
Tell me how you spent these several days.
A. I had, I think, four sessions of one or two days at a time with representatives of Lovell White

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Durrant and Simpson Thacher, at which time we would go over to make sure I was fully understanding what the processes were from 1987 up to the present time.

Q. Anything else that you did to prepare for your deposition?

A. No.

Q. All right. So these four sessions of one or two days' preparation were spent with the lawyers. Is there any other time -- I'm sorry.

Is there any other thing that you did with -- during this time period?

MS. McGARRY: Objection.

A. Is there any other thing --

Q. That you did to prepare for this deposition, other than meet with the lawyers.

MS. McGARRY: And the other things he already testified about.

A. I was also working on my own in conjunction -- separately.

Q. All right. I'm just trying to find out if there's anything else.

A. I don't think so.

Q. All right. Have we talked about all the documents that you reviewed in preparation for your deposition?

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A. I think so, yes.
Q. Are there any other papers that were authored by Lovell White Durrant that you reviewed in preparation for your deposition today which we haven't discussed?
A. No. I told you that there was a collection of papers authored by Lovell's.
Q. I understood you told me there's a collection, and we talked about a note that went to B.A.T Industries employees. What else was in that collection of papers?
A. It was a fairly substantial collection of papers to do -- to deal with the -- the whole process of the collection from B.A.T Industries employees. I -- I find it very difficult to identify any more specific documents. It was all, around that time, theme about how the process should be conducted, how it was indeed conducted.
Q. Was there more than one document that went from the lawyers to employees?
A. No, I don't believe so.
Q. All right. In addition to the -- the one document that went from the lawyers to the employees, what other specific documents do you recall that you reviewed in preparation for your deposition?
MS. McGARRY: Objection, mischaracterizes

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the prior testimony.
A. I think I corrected my early answer about a document going from Lovell's to employees. I believe I -- I said that it may have been authored by, but it was actually sent out to employees by another name.
Q. All right. But apart from that document, what other document did you review?
A. I think I've given you as many documents as I can recall looking at.
Q. Well sir, you've given me some very general statements about documents relating to the process. You've talked specifically about the one that went to employees. And I'm asking you specifically about any others that you might remember in that collection of documents.
A. I can visualize a -- a -- a collection of papers without being specific as to other -- other individual papers.
Q. Well I'd like you to be specific about the papers. What do you remember about them?
MS. McGARRY: Ms. Wivell, don't argue with the witness.
A. If I could recall other individual documents, I -- I'd certainly tell you about them. I don't recall other individual documents that come to mind

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as being, what shall I say, as being able to recall them.

Q. Did you read any depositions for this -- in preparation for this deposition?

A. I've seen one or two depositions.

Q. Which --

A. Yes.

Q. -- depositions have you seen?

A. I've seen --

MS. McGARRY: Excuse me. Ms. Wivell, you're starting to cut off the witness's answer. Please let him complete his answer before you go to your next question.

A. I've seen a deposition of Richard Lowther. I've -- I've -- I've seen one or two others, whose names I don't actually recall.

Q. What were the subjects of the depositions that you don't recall?

A. The same subjects as this.

Q. Are there any other documents that you reviewed in preparation for your deposition today?

A. I saw parts of the tape of Richard Lowther's deposition.

Q. And what was the subject matter of the portion of the tape you saw?

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A. I saw -- I saw various pieces of it. I -- I would -- I'd just go through the tape, stopping and starting. I recall certainly the introductory parts, as -- as we've discussed here. Certain specific documents that were presented to Richard Lowther for his comment. Certain other parts, again, which don't -- don't stick in my mind at the present time.

Q. Were there any -- any written instructions to the people who were supposed to collect responsive documents in this case?

A. I don't believe we gave them written instructions, no.

Q. Was there an outline of the kinds of documents that were to be collected in this case?

A. An outline for who?

Q. The -- the people collecting the documents.

A. No, not that I -- not that I'm aware of.

Q. Sir, based on what you know personally and what you learned in preparation for this deposition, has every non-privileged responsive document requested by the plaintiffs in this case been produced by defendant B.A.T Industries, BATCO and BATUKE?

A. I believe that the best possible effort has been made to make sure that is the case. I'm not sure I can categorically say yes, they have, for the reasons

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that we've actually given in responses to interrogatories previously.

Q. All right. Well based on what you know personally and what you learned in preparation for this deposition, has every responsive document requested by plaintiffs in this lawsuit which has not been produced been listed on defendants' privilege log?

A. No.

Q. Are there any -- all right.

What responsive documents have been requested by plaintiffs in this lawsuit which have not been produced or listed on defendants' privilege log?

A. I have in mind those documents that we've reported to you -- to plaintiffs earlier on which may have been lost or -- or missing.

(Plaintiffs' Exhibit 473 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Exhibit 473, these are responses of B.A.T Industries P.L.C. to plaintiffs' interrogatories relating to document destruction. Are you referring in your last answer to documents which would be responsive to Interrogatory No. 2?

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A. I was, yes.

(Plaintiffs' Exhibit 474 was marked for identification.)

MS. McGARRY: Off the record.

THE REPORTER: Both? Both records?

MS. McGARRY: I don't care about the video.

(Discussion off the stenographic record.)

MS. WIVELL: Let's go on.

THE REPORTER: We're on the record.

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Exhibit 474, this is the supplemental amended responses of B.A.T Industries P.L.C. to plaintiffs' interrogatories relating to document destruction; correct?

A. Correct.

Q. All right. And these interrogatory answers were served on plaintiffs -- I'm sorry -- are dated -- strike that.

These interrogatory answers are dated July 16th, 1997; correct?

A. Correct.

Q. You understand that there has been a supplemental correction of a typographical error in

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another corrected supplemental amended response of B.A.T Industries P.L.C. to plaintiffs' interrogatories relating to document destruction?

A. I understand that.

MS. WIVELL: All right. Why don't we mark that supplemental answer -- or response.

(Plaintiffs' Exhibit 475 was marked for identification.)

MS. McGARRY: I have an extra copy if you'd like it.

MS. WIVELL: Thank you.

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Exhibit 475, is that the supplemental answer that corrects the typo made in Exhibit 474?

A. Yes.

Q. For the record, can you direct me to the typographical correction?

A. No, I can't.

MS. WIVELL: Can anyone?

MS. McGARRY: Yes. I think we pointed it out in a cover letter. It's just a date.

MR. BONNER: Page eight, paragraph C., right at the top.

MS. McGARRY: It's at the top of page

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eight. The date there in the corrected version says 1983. It appeared as 1988 in the prior uncorrected version.

MS. WIVELL: All right. Can we take a brief break?

MS. McGARRY: Sure.

THE REPORTER: Off the record, please.

(Recess taken.)

MS. McGARRY: Ms. Wivell, could I just ask you to clarify one of your prior questions. When you asked whether any documents had been given to people collecting files, were you just speaking to employees, or also any lawyers --

MS. WIVELL: Any --

MS. McGARRY: -- or law firm personnel?

MS. WIVELL: Anyone.

THE WITNESS: In that case, I have to amend my answer because I was concentrating just on employees.

A. Apparently there was a statement given to personnel from Lovell White Durrant who assisted or advised in connection with the file collection.

Q. All right. We'll get back to that in a moment then.

A. And there is -- there's one other matter. You

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asked me about who I'd spoken to in connection with preparation for this deposition, and I've offended my counsel by omitting to mention Libby McGarry.

Q. All right. I'd like to go back to an answer you gave a little bit ago. I think you said, concerning -- no, strike that. Let me start again.

I had asked you what responsive documents have been requested by plaintiffs in this lawsuit that have not been produced or listed on defendants' privilege log, and you responded "I have in mind those documents that we reported to you -- to plaintiffs early on which may have been lost or missing." Do you recall that?

A. Yes.

Q. All right. And do you have in mind in that answer the documents that are listed in Exhibit 475 in response -- in supplemental response to Interrogatory No. 2?

A. 475, I think, is not the complete response, this is just the supplemental response. I believe that's correct.

Q. All right.

A. I had in mind the -- the complete response, including this supplemental one.

Q. Now if you turn to page 473 -- I'm sorry.

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Strike that.

If you turn to Exhibit 473, is that the complete response that you're referring to?

MS. McGARRY: Objection.

A. I don't think I've got 473.

First.

Q. You have it there, sir?

A. Yes. It was the first -- it was the first document.

Q. All right. And just for the record, 473 is the responses of B.A.T Industries P.L.C. to plaintiffs' interrogatories relating to document destruction; correct?

A. That's correct.

Q. And this --

Is this interrogatory answer what you were referring to when you said you wanted to refer to the complete answer?

MS. McGARRY: Objection.

A. I don't believe this particular document is the finalized amended version. I -- I was referring to the most up-to-date and comprehensive response that we've given to plaintiffs.

Q. All right. Well Exhibit 475 I received this morning and it's dated July 18th, 1997. Is this the

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complete answer that you're referring to?

A. What I'm referring to is -- is those -- those documents which make up, and I think there's -- there's been -- there's been supplemental amended responses to -- to this document which is first dated, I think, July '96, so I'm referring to the -- the most comprehensive answer and whichever amended responses and supplemental responses we've given to plaintiffs.

MS. McGARRY: If you don't have a copy of the February 1997 answers, we can get copies for you at the break.

MS. WIVELL: I would appreciate that. Could you do that?

MS. McGARRY: Sure.

BY MS. WIVELL:

Q. When did defendants first learn that the documents listed as having been destroyed or that defendants are unable to find, when did defendants first learn that those documents were gone?

A. There are several categories of -- of such documents, so the answer to that is: At different periods of time.

Q. All right. Well let's take a look at Exhibit 475, and would you turn to page five where it says

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"SPECIFIC INSTANCES OF DOCUMENT DESTRUCTION/DOCUMENT TRANSFER." Do you see that?

A. Yes.

Q. Go to number one, "Files/Documents That Were Destroyed." I see here there is an I., it says "In 1984, Dr. Earl Kohnhorst...," and then it goes on.

When did defendants learn that those slides were destroyed?

A. I believe defendants learned about the instance, that -- that particular instance and -- and the following instances, between the time of our previous amended response and the date of filing of this.

Q. What discovery took place so that defendants learned this in the intervening period?

A. It was --

MS. McGARRY: Objection.

A. It was further work by external lawyers to ascertain on their due-diligence inquiries instances to relate to -- to plaintiffs of this nature.

Q. All right. Well let's take the first one. Who undertook that investigation of point I. in Exhibit 475?

A. It was Simpson Thacher.

Q. Who at Simpson Thacher?

A. Pat Bonner.

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Q. And what did he do?
A. I don't know specifically what he did.
Q. All right. Let's --
Would you find out and get back to me after lunch?
A. I will.
Q. All right. Regarding point J., the April '92 agenda, who investigated that?
A. Pat Bonner at Simpson Thacher.
Q. What did he do?
A. I don't know specifically.
Q. Will you find out?
A. I will.
Q. Would your answer be the same for points K., L. of this document?
A. Yes, they would.
Q. All right. Will you find out the answer and get back to me after lunch?
A. I will.
Q. Let's turn to the next portion of Exhibit 475, documents and files that cannot be located. There is supplemental information given there concerning several files which cannot be located; right?
A. Yes.
Q. Who performed the due diligence to determine

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that those files could not be located?
A. It was Pat Bonner.
Q. Do you know what he did?
A. I believe on these instances he spoke to personnel in Southampton.
Q. Who did he speak to?
A. I may be wrong, I -- I -- I know he spoke to several people in Southampton. I -- I -- I won't say names. I'm just not sure whether these instances are the same conversations.
Q. All right. Will you find out and report back to me after lunch?
A. I will.
Q. Concerning point F., Dr. Green's files, it refers to a diligence search in the answer to the interrogatories. What was done to do that search?
A. Again, I'm not sure specifically what was done.
Q. Who did it?
A. Pat Bonner again.
Q. Will you find out what he did and report back --
A. Yes.
Q. -- after lunch?
Now concerning documents that have been routed to a third party, do you see the answers there?
A. I do.

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Q. All right. Now who did the investigation that led to the interrogatory answer 3.B. that's on this page?

MS. McGARRY: Take your time to read the answer.

A. I believe Pat Bonner, with the assistance of Lovell White, investigated those instances.

Q. What did he do?

A. I believe he again spoke to personnel in Southampton.

Q. Will you confirm that?

A. I will.

Q. Find out what he did and get back to me after lunch, sir?

A. Yes, I will.

Q. Thank you.

Would you turn to point C. on page eight of Exhibit 475. That concerns a videotape which was made by Mr. Colin Greig; correct?

A. Yes.

Q. All right. And what was done to determine whether that tape existed?

A. I don't know specifically.

Q. Will -- did you -- strike that.

Who did that investigation?

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A. Pat Bonner, I believe.
Q. Will you talk to him and find out what was done?
A. I will.
Q. Report back after lunch?
A. I will.
Q. Thank you.
All right. "Documents That Were Not Sent To An Intended Recipient" is the next subheading. Do you know what was done to -- that led to that answer?
A. Not specifically.
Q. Who did the investigation?
A. Pat Bonner, I believe.
Q. Will you talk to him and find out what was done and report back after lunch?
A. I will.
Q. Thank you.
Now are the examples of documents which were destroyed which cannot be located, documents that may have been routed to a third party or documents that were not sent to an intended recipient, are there any other examples of responsive documents that we have not discussed other than those listed in 475?
A. I don't believe so, subject only to the qualification that we -- that defendants have put in in the beginning of these -- these amended responses.

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Q. So apart from those documents, would it -- those documents listed in 475, would it be fair to say that every non-privileged responsive document requested by the plaintiffs in this case has been produced by the defendants?

MS. McGARRY: Objection.

A. Subject to only the qualifications I've just mentioned, yes.

Q. And subject to the qualifications of those documents listed in Exhibit 475, based on what you know personally and what you learned in preparation for this deposition, has every responsive document requested by the plaintiffs in this case which has not been produced been listed on defendants' privilege log in this case?

MS. McGARRY: Objection.

A. Can you repeat that, please?

Q. Certainly.

Based on what you know personally and what you learned in preparation for this deposition, and apart from those documents which are listed in Exhibit 475, has every responsive document requested by plaintiffs in this litigation which has not been produced been listed on defendants' privilege log in this case?

MS. McGARRY: Objection.

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A. I can't answer that with an absolute yes because I can't swear that we've picked up every single piece of paper, despite our best efforts.

Q. Are there any responsive documents that have been withheld and not listed on the privilege log?

A. No.

Q. Were there other candidates who were considered to be the company spokesperson for this deposition?

MS. McGARRY: Objection. I'll let him answer "yes" or "no" because I'm concerned about you getting into privileged material.

A. Yes.

Q. Who was considered as another alternative candidate?

A. Graham Livingston.

Q. Why was Mr. Livingston not chosen to be the spokesperson?

A. Because I have --

MS. McGARRY: Excuse me. I'm going to have to confer with Mr. Gilbey to make sure we don't get into a privileged matter. We can either take a break to do that now, or we can do it at the lunch break.

MS. WIVELL: Why don't -- all right. Why don't we take a break now.

THE REPORTER: Off the record, please.

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(Discussion off the record.)

BY MS. WIVELL:

Q. Sir, before we went off the record I had asked you why was Mr. Livingston not chosen to be the spokesperson in this deposition today; correct?

A. Correct.

Q. All right. Why?

A. Because when we considered it, it was agreed that I had the most broad knowledge to be able to respond to this deposition.

Q. Any other reasons?

A. No.

Q. Has defendant B.A.T Industries ever been deposed before pursuant to Rule 30(b)(6) or Rule 30.02?

A. No.

Q. Have you ever participated in any document collection in any other case alleging damages out of the use of cigarettes?

A. No.

Q. Did -- I -- I'm sorry. Strike that.

I think you said, after the first short break, that there had been a statement that was sent out to those persons from Lovell White Durrant who were participating in the document production; is that correct?

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A. That's correct.
Q. What was the nature of that statement?
A. I don't know because I haven't seen it.
Q. You never saw it at all.
A. I haven't seen it.
Q. Did anyone tell you what the nature of the document was?
A. No. No.
Q. How do you know it exists?
A. I've just been told.
Q. By whom?
A. By counsel.
Q. By whom?
A. By Pat Bonner and Graham Livingston.
Q. What did they tell you about the document?
A. Nothing, other than I was incorrect in my response to -- to you earlier on.
Q. And they didn't --
A. They did not --
Q. -- give you this document to review in preparation for your deposition.
A. No.
Q. Have you asked to see it?
A. No.
Q. Tell me everything you know about this document.

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A. I believe the document reflects the procedures that I -- I know and understand were put in place for the collection of files from B.A.T Industries and BATCO.

Q. All right. Let's talk about those procedures. What procedures do you understand were put in place for the collection of files from B.A.T Industries and BATCO?

A. The procedure was a very comprehensive procedure. I answered earlier on that it began with asking file owners to -- to list their files. And we have to be careful here because there's slightly different procedures for B.A.T Industries and for BATCO.

Q. All right. Why don't we take B.A.T Industries to begin with. What procedures were put in place for that?

A. Employees within B.A.T Industries were asked to provide lists of all the files that they had in their possession. Those file lists then went to Lovell White Durrant, who would ascertain from those lists those files and areas that might reasonably contain anything to do with smoking and health or where, I would broadly say, were jurisdiction activities of B.A.T Industries.

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Q. And --
A. So that --
Q. Go ahead.
A. The idea at that stage being to take out files which quite clearly were never going to provide any files that had to do with those two issues.

Thereafter, all the files which had not been culled out from those lists were sent up to Lovell White Durrant for a review by a lawyer and paralegal team. At that first step, again, there was an opportunity to identify files which contained nothing to do with those issues. The files that remained in as having anything possibly to do with those issues went through the review and production process.

Q. Have we now talked about all the procedures?
A. Save for what the detail of the production processes and what the lawyers did.
Q. I'd like to go back to that first instruction or first procedure that you mentioned where the employees were asked to list all the files in their possession. Were they given any instructions about how they were to identify or name the files in their possession?
A. Yes, they were.
Q. What instructions were they given?

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A. They were given a note which we've spoken about previously, which identified the -- the broad scenario. They were also given verbal instructions.
Q. You sid verbal?
A. Verbal.
Q. All right.
Have we talked about everything that was said to the employees in the note?
A. I think so, yes.
Q. Now you mentioned they were given verbal instructions. Who gave them the verbal instructions?
A. I believe it was representatives of Lovell White Durrant.
Q. How were these instructions given to the employees?
A. It was given -- they were --
The instructions were given at a -- a large meeting of all employees who were available to attend that meeting at Windsor House.
Q. What were the instructions that these employees received?
A. I wasn't there and I haven't seen any -- any transcript. My belief is that the instructions reiterated and broadened what was said in the note about the situation that now existed as regards the

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U.S. smoking-and-health litigation, the need for all responsive files to be collected, and explained the type of files that were being specifically sought for that exercise.

Q. What was said in the note about the situation that existed regarding the U.S. smoking-and-health litigation?

A. I think the note predated B.A.T. formally coming into the Minnesota litigation, but I -- but I -- but it was anticipated that there would be a need at some stage to collect the files, and the focus was clearly going to be on smoking and health and jurisdiction, and the theme was -- was around getting all responsive files in to do with those issues.

Q. Now you said that the note explained the types of files that were responsive.

MS. McGARRY: Objection.

Q. Is that right?

A. No, I didn't say that.

Q. I'm sorry. You said the instructions explained the types of files that were being specifically sought for that exercise; is that right?

A. That's correct.

Q. So the note did not specifically explain the type of files that were being sought for B.A.T. --

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from B.A.T Industries employees; right?

MS. McGARRY: Objection.

A. I think I said earlier that the note did say that files -- all documents to do with smoking and health and jurisdictional issues would be required.

Q. All right. But just so we're clear here, the note did not specify beyond that general heading; is that right?

A. That's right.

Q. Okay. But the instructions, the verbal instructions that were given to the B.A.T Industries employees did specify beyond that general heading?

A. I don't believe they did, no.

Q. Okay. Well you said as part of your answer concerning the instructions verbally given and -- that they explained the types of files that were being specifically sought for that exercise. What did you mean by that, sir?

A. Oh, that was misleading, then, because when I say "specifically," I -- I -- I continue to -- there was --

There was no possibility, without at this time any document demands, to be specific beyond the anticipation of those broad categories.

Q. Okay. Were these instructions, written and

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verbal, given after the Castano class order concerning document production was entered?

A. Can you help me with when that was?

Q. Offhand I can't, I'm sorry. But it was -- you understood -- I'm sorry. Strike that.

Did you understand that these instructions were given in response to document requests produced in another case in the United States?

MS. McGARRY: Objection.

A. No.

Q. Well if these instructions, verbal and written, were given to B.A.T Industries employees before the Minnesota lawsuit was filed, why were they given?

MS. McGARRY: Objection.

A. No.

MS. McGARRY: Compound, and misstates the prior testimony.

A. What I said was it was before the -- before B.A.T Industries were joined in Minnesota. I think Minnesota filed in -- correct me if I'm wrong -- February or March of '94, and B.A.T Industries were joined much later in the year. So there was an anticipation of -- of -- of involvement.

Q. Well I think that our case was filed in September of 1994. Just so we're clear here, were

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the written and verbal instructions given to the B.A.T Industries employees before September of 1994?

MS. McGARRY: Objection, compound.

A. I have in mind -- I have in mind November '94, so maybe my -- my chronology is slightly out.

Q. I'm not sure you and I are communicating. When you say you have in mind November '94, what are you talking about?

A. Of when the presentation to the employees was.

Q. All right. When was the note sent to the B.A.T Industries employees?

MS. McGARRY: Objection, asked and answered.

A. It would have been around the same period of the presentation to the employees.

Q. And just so we're clear, that's, according to your recollection, November of '94?

A. That's right.

Q. Now you said the list then went to Lovell White Durrant who ascertained whether or not a file might be responsive; is that fair?

A. Responsive to smoking and health or jurisdiction, yes. Yes.

Q. Okay. Who made those decisions at Lovell White Durrant?

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A. The -- the first decision was made by solicitors from Lovell White.
Q. Who?
A. I'm not sure the names as we sit here.
Q. All right. Can you find out and report back to us after lunch?
A. Yes.
Q. Thank you.
How did they determine whether a particular file might contain responsive documents?
A. They would look through the -- the file.
Q. I'm not sure I understand. I thought that the list went to Lovell White Durrant, who then ascertained whether the file might contain responsive documents, and then I thought you said, and correct me if I'm wrong, that the files which were thought to be responsive were then sent up to Lovell White Durrant. Is that right?
MS. McGARRY: That's not an exact characterization of the prior answer.
A. There was two stages. The -- the -- the list process was intended to eliminate files which very clearly could have nothing to do with the issues; by way of example, purchasing carpet tiles, if such files existed. The second stage was when we've

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eliminated from the list those very obvious type of files, all the rest of the files would be brought up to Lovell White Durrant.

There was a second stage, then, when solicitors physically went through those files to see just what the general content of the file was and whether that -- those files could contain information relating to those issues.

Q. All right. Would it be fair to say, then, that there could be files whose contents were mislabeled who were never reviewed for responsiveness?

MS. McGARRY: Objection, calls for speculation. You may answer.

A. Yes.

Q. Because it would be fair to say that no one specifically looked through every file in B.A.T Industries to determine whether or not it contained responsive documents.

A. At that time. There was a subsequent due diligence check.

(Discussion off the stenographic record.)

Q. All right. Well let me try and clear this up. Was there a subsequent due diligence check at that time?

A. No.

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Q. All right. So it would be fair to say that at the time of the initial listing of files by B.A.T Industries employees and file list review by Lovell White Durrant, there was not a due diligence check to review every file to see whether it had responsive documents.

A. That's correct.

Q. There was at some other time a due diligence check.

A. That's correct.

Q. So it would be fair to say, wouldn't it, sir, that you cannot tell me as you sit here today that all responsive documents in defendant's B.A.T Industries' files were produced that were responsive?

MS. McGARRY: Objection, asked and answered at least twice prior to this. At some point I'm going to cut you off from answering questions you ask over and over again.

A. Can you repeat that again.

Q. Certainly.

So it would be fair to say, wouldn't it, sir, that you cannot tell me as you sit here today that all responsive documents in defendant's B.A.T Industries' files were produced that were responsive?

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A. No.
Q. No, you cannot tell me, or no, my answer -- my question is incorrect?
A. No, I can't tell you that every possible file containing responsive documents might have been produced.
Q. Now I'd like to take us through the next step in the process. When it was determined by Lovell White Durrant that a file might possibly contain responsive documents, at that time was the file shipped to -- here to London for review?
A. It was already here after that second stage. The files were -- were brought up to Lovell White after the first cull from the file lists.
Q. Okay. What protection was put in place to assure that documents that were in the file at the time the employee listed the file were actually in the file when the -- the list went to Lovell White Durrant?
A. None that I'm aware, over and above the -- the guidance that had been given to employees about the need for putting all these files together which were potentially responsive.
Q. Well, were the instructions that were given to the employees, either in writing or verbally, did

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they contain or include instructions not to remove things from the files?

A. Yes.

Q. How do you know that?

A. I know that from the -- from the document I saw, and from the reports of the presentation that I've been told about.

Q. So in addition to the things you've already reported to us about what that document said, it included a statement not to remove items from files?

A. Yes, it did, yes.

Q. Is there anything else that was included in that document that you haven't told us about already?

A. I don't think so, no. You're -- you're quite right that the -- the presentation and the document, there was a very strong theme there which followed on from the -- the basic theme I've already described about the importance of maintaining and preserving all these files and documents within them.

Q. Who gave the presentation to the B.A.T Industries employees?

A. I believe it was two lawyers from Lovell White Durrant.

Q. Who?

A. I believe it was Lucy Ward, and I think it was a

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gentleman called Andrew Foyle, but I'm not absolutely sure.

Q. Did you speak with Andrew Foyle concerning that presentation in preparation for your deposition today?

A. No, I didn't.

Q. Did you speak with Lucy Ward about that presentation as part of your preparation for your deposition today?

A. Yes, I did.

MS. McGARRY: Just let Ms. Wivell complete her answer -- question so the reporter can get it all. Thanks.

Q. Did Ms. Ward have notes or an outline that she used in that presentation?

A. I don't know.

Q. Did you see any notes or outline of the presentation?

A. No, I didn't.

Q. Was there any handout given to the employees during that presentation?

A. I believe there was.

Q. What was in the handout?

A. I'm not very sure about this. I believe there was a handout which I have -- I -- I perhaps have

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seen amongst a mass of documents. My belief from that recollection is that, again, it reiterated the central themes that we've discussed about these -- the purpose of the exercise and the need for the preservation.

Q. All right. Now we've now talked about two documents which were given to employees of B.A.T Industries as a part of this document collection and production process. Are there any others?

A. Not that I can think of, no.

Q. Did the document which was handed out tell the employees anything more about the type of documents which were requested?

A. I don't believe so, no.

Q. What else did that document say?

A. I can't elaborate any more than I've said on my recollections.

Just if I may revisit the -- the question before last, I think, about further documents, I believe that there would -- there was a further note to employees, probably a year later, to make sure that they understood the continuing need for -- for the preservation of the files.

Q. And what did that note say?

A. Just that -- reiterated the -- the importance of

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preserving files.
Q. Anything else that the note said?
A. I'm trying to think of the chronology. Again, it may have been to do with another visit on -- on the due diligence that -- to warn them that lawyers were coming back to -- to -- to recheck on the previous productions.
Q. Now have we talked about all the written communication that went to the employees of B.A.T Industries concerning this document production?
A. I think so. If I think of anything else, obviously, I'll say.
Q. In addition to the one meeting where Ms. Ward and Mr. Foyle made a presentation, were there any other verbal communications to the employees?
A. Not that I'm aware of.
Q. Were the employees ever provided with the definitions of "documents" that occur in Plaintiffs' Exhibit 469?
A. I don't believe so.
Q. Were the definitions of "documents" that occur in Plaintiffs' Exhibit 469 included in the presentation which Ms. Ward and Mr. Foyle made to the employees?
A. I believe they were, yes.

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Q. They were --

Were the instructions concerning the definition of "documents" read to the employees during that meeting?

A. When I gave that answer, I don't mean that they -- they read those definitions verbatim. I don't believe they were -- they were --

They may or may not have been available. They certainly -- the theme, again, was certainly that we were not just talking about paper, we were talking about all documents within a very broad definition, tape or whatever.

Q. So you just don't know one way or the other whether the employees at B.A.T Industries were ever provided the definition of "documents" that's contained on page three of Exhibit 469.

A. No, not specifically.

Q. Are there any more verbal communications that were made concerning -- or with the employees at B.A.T Industries concerning the document collection?

A. I don't think there were.

Q. Was there a letter from the chairman that went to the employees or a note from the chairman that went to the employees?

A. I don't think there were -- was.

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Q. Did the chairman speak at this meeting that Ms. Ward and Mr. Foyle --

A. No, not that I've been told he did.

Q. Was there a recording made of that meeting?

A. No.

Q. Now I'd like to get back to the point where the files got to Lovell White. At that point you said that materials taken out of the -- materials which were non-responsive were taken out of the files; is that correct?

A. No, not at all. If we're talking about when the files first come to -- to Lovell White, we are here looking at a collection of files which potentially will contain anything responsive on smoking and health and jurisdiction. There was no removal of documents from files.

Q. So if there was a document in a file with a responsive document and the second document was non-responsive, it was produced along with the responsive documents?

A. That's correct. The whole -- the whole file would be produced.

Q. By the way, how were these files kept in the -- when they were in the possession of the B.A.T Industries employees?

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A. In various ways. They could be in employees' desks or more usually within a filing system for a particular individual or department.
Q. File cabinet?
A. File cabinet.
Q. Were they kept in file folders?
A. I think some of them were. Certainly not all.
Q. Now when the files from B.A.T Industries arrived at Lovell White Durrant, you said they were reviewed by legal -- a legal assistant and lawyers; is that correct?
A. Initially they were looked at by solicitors only.
Q. But you mentioned that they were looked at by paralegals earlier in your answer. When did that start occurring?
A. Thereafter.
Q. Why?
A. Because after the first review by a solicitor to make sure that that file did or did not contain material that might be potentially responsive, the file was moved -- those -- those that were potentially responsive were moved on to a much fuller review, at which case the paralegals became involved.
Q. Why?

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A. Because it was a very thorough system.
Q. Well I understand. But if the document was reviewed by a lawyer and deemed to be responsive, why was it necessary for it to be moved on to a second review by paralegals?
A. Two reasons: First of all, the first review was a very speedy review to -- to -- again, the purpose being to eliminate those files which didn't -- didn't contain anything to do with the issues. The second reason was that, because the first was a -- was a very speedy review, that the -- we then came on to a very much more thorough look at what was in that file.
Q. Well was something else going on at the same time? Was there coding going on or some other kind of systematizing?
A. At the next stage there was.
Q. Ah. All right. So despite the fact that the lawyers had reviewed the documents and found them to be responsive, they were sent on to legal assistants for this second level of detailed review; is that correct?
A. That's right.
Q. And what did the legal assistants do at that second level of review?

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A. They would look at the file in a great deal more detail and take more time than the lawyers first had to get a much more comprehensive idea of precisely what the file was all about.

Q. Well, did legal assistants make decisions that documents were non-responsive and would not be produced?

A. We weren't at this stage --

Nothing came out of those files once the files started going through that system, because it was potentially -- if it contained potentially responsive documents, that file stayed together all the way through.

Q. All right. I'm not sure that you understood my question. Did legal assistants at that second level of review decide that there were files that were non-responsive?

A. I don't believe so, no.

Q. What happened to the files after they had been reviewed by the paralegals?

A. They would then be photocopied.

Q. All right. Then what?

A. They had been photocopied and they would be reviewed for privileged documents and they would be reviewed for confidential or trade-secret documents,

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and after those reviews were complete they would -- the files would be put in -- the files, less the trade-secret and privileged documents, which are subject to different protections, were then put into the Guildford depository.

Q. All right. Have we talked about all of the procedures that were done to obtain responsive documents from B.A.T Industries files?

A. No. Because beyond the process we've got up to so far, there was a due diligence exercise that went on involving both Lovell and Simpson Thacher --

Q. All right.

A. -- to make sure that we picked up everything.

Q. All right. When did this due diligence begin?

A. I believe that Lovell's personnel revisited Windsor House from time to time during the process and were very closely involved in the collection of files from Windsor House, so from -- from their perspective, it was very much an ongoing process of visiting departments or individuals. I then know that Simpson Thacher, a team from Simpson Thacher came over, I believe March or April of 1995, and -- and -- and did a double check, a very thorough check that in fact everything potentially responsive had been taken.

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MS. McGARRY: 1995?

THE WITNESS: I think so, yes.

Q. All right. Is there anything else that was done to determine whether or not documents were responsive and should be produced by B.A.T Industries?

A. No, no. As I say, we were concentrating on -- on the files, and that was what we did with them.

Q. Okay. Well then, sir, can you explain to me why several thousand additional documents were produced to the plaintiffs this month in Minnesota?

A. We're not there talking about B.A.T Industries.

Q. We're not.

A. No.

Q. None of those documents are B.A.T Industries.

A. I don't believe any of those are B.A.T Industries.

Q. Okay. Now you mentioned that Lovell White Durrant visited B.A.T Industries at several points during this process; is that correct?

A. That's correct.

Q. All right. You said they talked with employees. When did that process begin?

A. They were involved from day one, of course, with the presentation, and were responsible for -- for the collection, so that Lovell White were always

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involved, it's just the -- the continuing involvement and the continuing checks that they employed.

Q. Well, what did they do when they talked to these employees?

A. I don't know specifically. They would have reiterated the instructions that they had already given.

Q. All right. I'm sorry, sir, because I thought I asked you if there were any other verbal instructions given to any employee, and you didn't mention these Lovell White visits, and I'm just trying to be thorough here.

MS. McGARRY: Just ask the question and forget about the preface, Ms. Wivell.

Q. Who conducted these visits?

MS. McGARRY: Objection, asked and answered. You may answer.

A. The team from Lovell White which -- who had responsibility for the document collection, as I said, were very, very closely involved from day one.

Q. And who was that?

A. It was Lucy Ward. I'm not sure offhand -- there was --

There was a team of four, about four lawyers, I think.

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Q. All right. Would --
A. Some of who --
MS. McGARRY: Please don't interrupt.
A. -- some of who were no longer, I know, with Lovell White. But Lucy Ward, I believe, was the -- the lead one. I think David Graves was also involved at that time.
Q. Were you --
MS. McGARRY: Please do not interrupt the witness. You asked him for a long list of people. Let him give it to you.
MS. WIVELL: Excuse me. When he takes a break and stops talking, I don't know whether he's done or not.
MS. McGARRY: Why don't you ask.
MS. WIVELL: Because sometimes it's difficult. And if you have an objection, please so state. I don't need lectures.
THE REPORTER: We have to change tape. Off the record, please.
(Discussion off the record.)
BY MS. WIVELL:
Q. Sir, before we took our break, I had asked you who was the team that did these interviews at Lovell White, and you had given me the name of Lucy Ward.

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Who is the rest of the team?
A. It was Jason Kirwin, K-i-r-w-e-n, I think, and a lady who's Jane Carter.
Q. Anyone else?
A. I think David Graves was -- was around as well.
Q. All right. Have we talked about all the procedures that were put in place to assure that B.A.T Industries documents were produced in this case?
A. No. We can come on to another -- another check that was employed.
Before I do that, can I correct one wrong answer? In connection with the presentation to B.A.T Industries staff, I said it was Lucy Ward and Andrew Foyle. That's wrong. It was Lucy Ward and Andrew Walker.
Q. All right. Now you learned that during the break by talking to counsel; didn't you?
A. I wasn't sure when I -- I -- I was half --
When I said it, I wasn't sure that I was correct on that. But I -- but they did confirm it, yes.
Q. All right. Are there any other questions that you need to change the answer to?
A. Yes. I believe you asked me about the -- the most recent production of, you said, several thousand

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documents from B.A.T Industries.

Q. Yes.

A. And I said there was no B.A.T Industries documents in -- in there. That was wrong.

Q. There were B.A.T Industries documents in there; weren't there?

A. That's correct.

Q. And can you explain, with all these procedures in place, why those documents weren't produced sooner?

A. Yes. The explanation is that despite all the checks that were ongoing over that period of time, we were still, as part of the due diligence obligation, rechecking, and there was a -- an even more comprehensive audit in the spring of this year conducted by Simpson Thacher, a team came over to -- to -- to England, and it was as a result of -- of that further rechecking and due diligence that those additional documents came to light.

Q. What did the Simpson Thacher team do this spring?

A. I believe what they did was pretty much recheck what had gone before by just making sure that every corner of the -- of the business, the B.A.T Industries, was checked, make -- trying to ascertain

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that everything has comprehensively been taken. I believe, I'm not sure from first-hand knowledge, that they were again speaking to people. The result of that further due diligence was that those other documents came to light.

Q. What exactly did they do to turn up these documents?

A. I don't know beyond what I've said.

Q. Who had came over from Simpson Thacher?

A. Denise Delgado and Alexis Coll.

Q. How long did this process take place?

A. I don't know how many days they were here.

Q. Where did the B.A.T Industries documents come from that were just recently produced to the plaintiffs?

A. I don't know that they came from one or two sources. I -- I believe it was just a comprehensive flow of documents from a variety of sources. I -- I don't know any more.

Q. Do you know any source where any of the recently produced B.A.T Industries documents came from?

A. No, I don't know.

Q. Could you find out over the lunch hour and report back to us?

A. Yes, indeed.

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Q. Thank you.

Have we now talked about all the procedures that were in place or put in place to make sure that responsive documents were produced by B.A.T Industries in this case?

A. I think we have, yes.

Q. All right. I'd like to turn to the question of BATCO and BATUKE documents.

Now were the procedures to produce BATUKE documents the same as those for BATCO documents?

A. Yes, they were.

Q. Why is that?

A. Because, as I've answered earlier, that this -- we step -- we step back. I think we have to deal with more than one stage. The first --

The first search for BATCO documents began in 1986, 1987, when all the research and development files from Southampton were -- were taken out from their owners and they were started to be processed to -- to provide a file bank of -- of information that might be needed.

Q. Why was that procedure begun?

A. That was in anticipation of BATCO getting involved in U.S. litigation.

Q. Am I correct that at this period of 1986 and

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1987, B.A.T Industries files were not part of this process?

A. You're correct, yes.

Q. All right. So would it be fair to say that the first search for smoking-and-health-related documents from the files of B.A.T Industries began in approximately November of 1994?

A. That's correct.

Q. Prior to that, no attempt had been made to find out what smoking-and-health documents were in the B.A.T Industries files.

A. That's right.

Q. All right. Let's go back to this 1986-'87 process. That applied only to BATCO, or did it also apply to BATUKE?

A. It applied only to BATCO research and development.

Q. All right. So any files from -- strike that.

Any files relating to smoking and health from places other than research and development at Southampton were not part of this process in 1986 and '87.

A. That's correct.

Q. All right. What else do you know about that process of review of the R&D files from Southampton?

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A. As I said just now, the -- the -- the idea was that -- I think it was what is called the second wave was happening in U.S. litigation, and this was in anticipation of perhaps BATCO's files being -- being needed, and the files that might be of most interest to -- to any prospective plaintiff would relate to research and development; therefore, the process was intended to -- to get those files, gather them together in case they were needed; hence, all research and development files were taken from those file owners at that time, brought up to Lovell White.

Q. All right. You referred to a second wave of U.S. litigation. Did you understand -- I'm sorry, strike that.

You referred to a second wave of U.S. litigation. You are referring to smoking-and-health-related litigation; right?

A. That's right.

Q. And that second wave you understand was essentially commenced approximately 1983 with the filing of a variety of suits, including the Cipollone case in New Jersey?

A. I think that's correct, yes.

Q. And you understand -- stood --

By the way, when I say "you," can we agree that

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we're talking, since you're speaking on behalf of B.A.T Industries, that it means B.A.T Industries?

A. Yes.

MS. McGARRY: I can't --

Q. Okay.

MS. McGARRY: I can't agree to that because I think it's going to lead to confusion on the record and ambiguity, so I'm going to be objecting if it's unclear. I think it would be easier to say B.A.T Industries.

MS. WIVELL: All right.

Q. Sir, isn't it true that at the time of this second wave of litigation, B.A.T Industries understood that document requests were being made of its wholly-owned subsidiary, Brown & Williamson, for documents to be produced in this U.S. litigation?

A. I believe that's correct, yes.

Q. And is it the testimony of B.A.T Industries that this review of Southampton R&D files that occurred beginning in 1986 and into 1987 was in anticipation of those files possibly being requested as part of that second wave of U.S. smoking-and-health-related litigation?

A. Sorry. Can you repeat that?

Q. Certainly.

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And is it the testimony of B.A.T Industries that this review of Southampton R&D files that occurred beginning in 1986 was in anticipation of those files possibly being requested as part of the second wave of U.S. smoking-and-health-related litigation?

A. Possibly, yes. Yes.

Q. All right. Was there any other reason for this review of R&D files from Southampton?

A. No.

Q. Now you said that, as part of this process, all R&D files from Southampton were taken from their file owners and brought to Lovell White Durrant?

A. That's right.

Q. So there was no process of limiting files here. There -- the files were actually physically taken to Lovell White and Durrant in their entirety.

A. I believe that's right. I -- I don't exclude that there was some lists. I -- I don't recall. I -- I believe that it was -- it was take everything and -- and ship it out.

Q. Did they take every single R&D file from Southampton and bring it to Lovell White?

A. I think that's right.

Q. What happened to them when they got to Lovell White?

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A. They were then looked at by solicitors to see whether in fact they could potentially contain anything that would be broadly responsive to the anticipated categories, which again were smoking and health.

Q. Were any documents destroyed as part of that review?

A. I don't believe so, no.

Q. Do you know for sure one way or the other?

A. I don't know for absolutely sure, no.

Q. Who would you talk to in order to answer that question?

A. I would -- well we've --

We've given answers in our interrogatories after searching into that, that particular issue; therefore, I -- I don't believe our answer could be even more comprehensive than it is now.

Q. All right. I'm not sure you answered my question, sir, and I move to strike as non-responsive.

Who would you ask to find out whether any documents were destroyed during that process in 1986 and '87?

A. If we had to go back again above and beyond what we've done already, I would start with Frank Marsh.

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Q. All right. Who actually took part on behalf of Lovell White Durrant in that review by the solicitors?

A. I don't know all the names. I know -- I know for sure that Graham Livingston and the name I mentioned before, Andrew Foyle, were involved at that stage.

Q. Anyone else?

A. Yes, but I don't know any more names.

Q. All right. Will you find out and report back to us after lunch?

A. Yes.

Q. Will you also find out whether any documents were destroyed during that process and report back to lunch -- to us after lunch?

A. I don't think I can do that, beyond going through another due diligence exercise, which we've done in our interrogatories.

Q. Will you ask Mr. Graham Livingston, since he's sitting down here at the end of the table, during lunch whether any documents were destroyed and report back to us after lunch?

MS. McGARRY: Yes, we'll undertake to verify that over lunch.

A. Yes, I will.

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Q. Thank you.

All right. Once the files were looked at by solicitors -- I'm sorry.

What were they looking for when they were reviewed by solicitors?

A. As I've just said, they were looking for anything that might reasonably relate to smoking-and-health issues.

Q. And if it reasonably related to smoking-and-health issues, was it kept?

A. Oh, indeed, yes.

Q. Then what was done with the files?

A. The files that were deemed to be in -- in that category were then copied, similar to the process we described earlier on.

Q. What happened to the files then?

A. The --

I have to tell you some more of the story. A whole batch of files were identified as being potentially responsive to the smoking-and-health issue. The copying process began. The whole process was then stopped in about 1989 when it appeared that the threat of litigation was ebbing away. So those files, all the files were then returned to their file owners. Obviously, those that had been copied

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already had been kept.
Q. When you say all those that had been copied already had been kept, what do you mean?
A. Just that. The copies -- the copy files were kept securely.
Q. All right. Kept by whom?
A. They were kept in an outside storage facility.
Q. Where?
A. First of all it was at Millbank, the -- the original BATCO headquarters, and thereafter they were kept in a -- a storage facility. I think it was Data Management kept them.
Q. But eventually were all of the original files that were taken from R&D at Southampton returned to the file owners?
A. I believe so, yes.
Q. What happened to those file owners who -- I'm sorry. Strike that.

What happened to the files of those file owners who were no longer with the company?
A. They would have gone -- I don't know specifically. I -- I would believe they would have gone back to the department or the person in the next best position to take those files.
Q. But you don't really know one way or the

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other; --
A. I don't know.
Q. -- do you?
A. Sorry.
Q. All right. Now have we talked about all of the things that were done to collect smoking-and-health-related documents from BATCO R&D at Southampton in 1986 and '87?
A. I think we have, yes.
Q. Was a computerized list made of those documents?
A. Of the files, the --
Q. Yes.
A. -- the information from the files --
Q. Yes.
A. -- was put on a database, yes.
Q. Is there a name for that database?
A. Rev A.
Q. Rev A?
A. Rev, R-e-v.
Q. Rev A. What does that mean?
A. I don't know what it's short for.
Q. Was there any other database created from these documents?
A. I don't believe so, no.
Q. All right. Have we talked about everything that

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was done with regard to the production of documents from the R&D files at Southampton that began in 1986?

A. I think so, yes.

Q. What else was done in this case to produce documents from BATCO and BATUKE?

A. In this case BATCO came into the case, I believe, in August 1995, and BATCO and B.A.T Industries undertook to provide plaintiffs with, obviously, the existing copy files and to supplement what was existing with a further collection, and therefore in those two stages we had to pull together the original BATCO files from -- from Rev A, and we then had to start a second collection of BATCO documents. At some time after August '95, BATUKE was also specifically involved, and the collection process captured all files from BATUKE as well as BATCO.

Q. All right. Well let's talk about what was done to -- for the second collection of BATCO documents that you just referred to in your answer. Okay?

What was done for that to -- to -- I'm sorry, strike that.

What was done to collect those documents?

A. It was similar to the first collection of documents, although I -- I believe that there was --

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there was more care to not send up to Lovell White those files which very clearly, from experience in the first collection, had nothing to do with particular areas that could be related to -- to issues in the litigation. But -- but very similarly, the files that might potentially be responsive were brought up from Southampton to -- to Lovell White to go through the process of checking that they were responsive, potentially relevant, and then they would be copied.

Q. All right. Were the documents that were brought up as part of -- as part of the 1986 collection also brought up for the second collection?

A. Well that -- that '86 collection was part of the stipulated order. In August 1995, B.A.T Industries and BATCO were obliged to provide plaintiffs with that first collection, I believe by the end of 1995, so we pulled those together. As I had said earlier, we already had a large percentage of those copied ready. We then had to go back -- (clearing throat) excuse me. We then had to go back to -- to fill in the gap of those files, which although part of the first collection, had not physically been photocopied.

Q. All right. Your answer says that there were a

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large percent that had been photocopied, but some had not; is that right?

A. That's right.

Q. What kind of documents had not been photocopied?

A. There wasn't a specific category. All that had happened was, as I said earlier, the -- the whole process had been stopped before it had been completed, so that at the time of having been stopped, not all files had been copied.

Q. Are there any documents that were catalogued as part of that first collection which have not been produced to plaintiffs and not placed on a privilege log?

A. Yes, there are.

Q. Which are those?

A. Those that are mentioned in the document-destruction interrogatories.

Q. All right. Are any -- were -- I'm sorry, strike that.

Were any of those documents in existence in 1986?

A. Well they must have been to get on the -- on the -- on the Rev A.

Q. And since that time they have been destroyed; is that correct?

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A. That's not correct. We just don't know where they are, as we've cited in the interrogatories.
Q. All right. But just so we're clear, the documents which were -- which are listed in the interrogatories, Exhibit 474, were in existence in 1986; correct?
A. Correct.
MS. McGARRY: Take your time to go through the whole document, Martyn.
Q. All right. Do you have Exhibit 474 there, sir?
A. Yes, I do.
Q. All right. Could you take a look at the supplemental response to Interrogatory No. 2 and just assure yourself that all of the documents which are listed there were in existence in 1986.
A. It appears, yes.
Q. All right. And they had to be because they were listed on the Rev A index; right?
A. Specific documents would not have been listed on the Rev A index. Rev A index listed only files.
Q. All right. But we know, because there's reference to these particular documents that are listed in response to supplemental -- or supplemental response to Interrogatory No. 2, that they were in existence in 1986, but they cannot be located now;

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correct?

A. That's correct.

Q. All right.

(Plaintiffs' Exhibit 476 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 476, this is the first amended response of B.A.T Industries P.L.C. to plaintiffs' interrogatories relating to document destruction that was filed or -- I'm sorry, is dated February 4th, 1997; correct?

A. That's right, yeah.

Q. All right. And this is the first list of documents -- I'm sorry, strike that.

Exhibit 476 contains B.A.T Industries first response to Interrogatory No. 2 which lists documents which cannot now be located; right?

A. Sorry, say that again.

Q. All right. Exhibit 476 contains B.A.T. first -- B.A.T Industries first response to Interrogatory No. 2 which lists documents which it cannot now locate; correct?

A. Yes.

Q. All right. Would it be fair to say that the

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documents contained in the answer to 476, the document -- documents referenced there, were in existence in 1986?

MS. McGARRY: Please take your time to go through the entire exhibit, Mr. Gilbey.

A. Some of these documents are dated after 1986.

Q. All right. But the ones that were dated before 1986, would it be fair to say that all of them that are referenced in response to Interrogatory No. 2 of Exhibit 476 were in existence in 1986?

A. No, that's not necessarily correct.

Q. All right. Which of these documents were not in existence in 1986?

A. I can't be sure, but it -- it doesn't follow that they must have existed in 1986. I'm -- I'm looking at B. on -- on page eight, which refers to the March -- March 1967 correspondence. We may have learned of that particular correspondence from separate due diligence inquiries, not from the fact that we knew for sure they were in existence at the time of '86.

Q. All right. Well let's go through these beginning with section one, documents and files that were destroyed. If I were to go through these point by point, would you be able to tell me who did the

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due diligence that led to these answers?
A. I probably would, yes.
Q. Is it all the same person?
A. I suspect it is.
Q. Is it Patrick Bonner?
A. I think it would be.
Q. All right. And in order to tell me what was done, you'd have to speak with Mr. Bonner; right?
A. I would, yes.
Q. All right. Do you know at this time what was done?
A. I know for some instances of his due diligence what he did, which was to speak to particular individuals. I -- I don't know comprehensively what he did.
Q. All right. Can you point me to the particular subset of this answer that you know specifically what Mr. Bonner did?
A. No, I couldn't do that, no.
Q. All right. Can you find out what he did and report to us after lunch?
A. I can.
Q. Would you do that for the entirety of the documents that are listed in response to question number two; in other words, find out what Mr. Bonner

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did to arrive at these answers?

A. Okay.

Q. All right. And you'll report back to us after lunch?

A. With the answer I've got then, yes.

Q. Thank you.

Have we talked about all of the procedures that were put into place in this litigation to assure that responsive documents were produced which were called for by plaintiffs' request for production?

A. No, I don't think we have.

Q. All right.

A. Because we've dealt with -- we dealt with B.A.T Industries, we've dealt with BATCO research and development, there are -- there -- there was sometimes slightly different procedures for -- for other areas.

Q. All right. Tell me what you know about the procedures for other areas.

A. For example, at Staines, which is now the -- the main head office of -- of BATCO, file lists were sometimes created from those areas where it would seem that in the normal course of business they wouldn't have particularly responsive files, and work was done from file lists. Alternatively, in some

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instances, teams of lawyers from Lovell White would come down to the premises and actually go through the files to see what -- if there's any of those files that might contain anything that was responsive.

Q. Who were the lawyers that did that from Lovell White?

A. David Graves, Jason Kirwin, Rosie Webb, one or two others whose names I can't recall at the moment.

Q. All right. Can you find out for us and let me know?

A. Yes, indeed.

Q. Were there written instructions given to any of the lawyers involved in the BATCO production?

A. I think there were, yes.

Q. All right. What did those instructions entail?

A. I haven't seen the instructions.

Q. What do you understand they entail?

A. I understand they would have reiterated the -- the type of files that needed to be taken and identified, and set out the procedures as to what would be done with those files once they were so identified.

Q. Did you ask to see those instructions as part of your preparation for this deposition?

A. No, I didn't, no.

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Q. Why not?
A. Because I know enough about the procedures to -- to know what went on.
Q. So you really don't know what those instructions say specifically; do you, sir?
A. No, I don't. No.
Q. Do you know if the instructions that were given to the lawyers involved in the BATCO production included the list of what comprises the document that was produced as part of plaintiffs' requests for production?
A. No, because we were dealing with files, not documents.
Q. All right. Well then let me ask you this: What was done for BATCO to assure itself that all documents responsive to plaintiffs' document requests were produced?
A. After -- when --
Supplemental to the -- the Lovell White involvement, which itself had checks built into it, there was Simpson Thacher who were involved in -- in checking, for want of a better expression, what -- what Lovell White were doing and who were involved with Lovell White and liaising with them about what was going on.

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Q. I'm sure -- I'm -- I'm -- I'm sorry, strike that.

I'm not sure that I understood that you were making a distinction between documents and files. Are you making in your answers a distinction between documents and files?

A. Oh, very much so, yes.

Q. All right. How do you define "files" when you use that term?

A. Literally a collection of papers, either in a -- in -- in some -- in some form of identifiable binder.

Q. So if something was not in a particular binder, it wouldn't be considered a file?

A. No, that's --

Well, that isn't really correct. If -- if something was not in a -- in a file, in -- in an individual binder, it was a loose piece of paper, it would be -- it would be put into a binder or -- or a sleeve of some sort so that it could be transported on its own, so that would be a file.

Q. Okay. And what's a --

What comprised a "document" for terms of -- or for purposes of this production in this case?

A. We weren't concerned with documents, because that was what we'd agreed with the -- with

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plaintiffs.
Q. So you understood -- correct me if I'm wrong -- and by "you" I mean B.A.T Industries understood that plaintiffs were only interested in pieces of paper in this production?
A. Sorry, say again.
Q. Did B.A.T Industries understand that plaintiffs were only interested in pieces of paper as far as this production went?
A. I'm not sure I understand what you're -- the question at all.
Q. All right. Well let's go back to Exhibit 469. Can you get it out, sir. All right. Do you see -- can you turn to page three.
Do you see there a definition of "documents?"
A. Yes.
Q. All right. And it says, "As used herein, 'document' shall include every writing and record of every type," and then it goes on, quite lengthy definition; right?
A. Yes, indeed.
Q. Do you see down about halfway through the definition on the eighth line, do you see where it says "voice recordings?"
A. Yes.

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Q. Do you understand that plaintiffs' request for production included voice recordings?
A. No, I don't understand that.
Q. Didn't understand that.
Did you understand that plaintiffs' request for production included photographs?
A. Yes.
Q. Did you understand that plaintiffs' request for production included tapes?
A. I'm sorry, voice recordings so far as they relate to tapes, yes, of course, those were included.
Q. All right. Well were tapes, which concerned smoking and health, produced to plaintiffs by B.A.T Industries, BATCO or BATUKE?
A. Yes, many of them.
Q. Were all of them which were responsive produced to plaintiffs?
A. Yes, indeed.
Q. Every one.
A. Well, so far as we can be sure from our good faith and due diligence, yes.
Q. All right. Now it talks about printouts as the next item. Do you see that?
A. Yes, indeed.
Q. Were print -- computer printouts produced to

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plaintiffs?
A. I believe so, yes.
Q. So just so we're clear here, then, are you telling me that B.A.T Industries, BATCO and BATUKE produced non-written documents if they fell within this definition?
A. Oh, yes. I think the confusion is arising because of, by arrangement with plaintiffs in this case, we were moving away from a document-by-document collection, which I understand was -- was the rule in -- with the -- with the remaining defendants, and we were concentrating on getting files into the depository for examination by the plaintiffs. But so far as -- as files contained tapes, or any of these matters here, and they existed, yes, they were swept up and -- and brought into the equation.
Q. So if there were smoking-and-health-related videotapes, they have been produced.
A. They have indeed.
Q. All right. Have we talked about all of the procedures that were put into place for production of documents by BATCO?
A. I think so. I think we've got a good comprehensive picture of what went on.
Q. All right. Tell me what took place for the

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production of documents from BATUKE.

A. The BATUKE and the BATCO productions were -- were the same. By this point in time there was no distinction between the -- the two entities. BATUKE historically had been based in Woking, and all the files in Woking were -- were swept up from there as well.

Q. When did that process begin?

A. That began --

I'm just trying to think of the sequence, because we started in late '95 with going back to Southampton. When we finished, as best we could, the Southampton production, attention was then turned to Woking, so I'm -- I'm -- I can't be sure. It would have been early '96, somewhere of mid-'96.

Q. And when you say early '96 or mid-'96, you're referring to the beginning of the production --

A. Yes, that's right.

I'm sorry.

Q. -- at BATUKE; correct?

A. Yes.

Q. Now the three defendants, B.A.T Industries, BATCO and BATUKE, understood that the requests for production required them to search all of their company files to collect responsive documents;

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correct?
A. That's correct.
Q. Were there any files at any of the three companies which were not searched for responsive documents?
A. I don't believe so, other than the ones we've been able to identify in -- in interrogatories.
Q. All right. Now I want to talk a little bit about those files. Were there a variety of different kinds and types of files that B.A.T Industries, BATCO and BATUKE keep as part of their business which had to be searched?
MS. McGARRY: Sorry, could I hear the question.
Let me check, read that again. Okay.
A. Sorry, I didn't follow that.
Q. All right. Let me repeat the question.
Were there a variety of different kinds and types of files that B.A.T Industries, BATCO and BATUKE, kept as part of their business which had to be searched for this production?
A. Specific varieties.
Q. Yes.
A. No, no. We -- we went through everything.
Q. Okay. I --

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You and I are not communicating here. All right. For example, there are R&D files that were at Southampton; right?

A. Right.

Q. Okay. And there were board files of board meetings at B.A.T Industries; right?

A. (Nodding.)

THE REPORTER: Your answer?

MS. WIVELL: You have to answer out loud.

A. That's correct. That's correct.

Q. Okay. So you do understand when I'm saying there are different types of files which were reviewed for responsive documents; correct?

A. Correct.

Q. Okay. And would you agree that B.A.T Industries, BATCO and BATUKE recognized that they had a duty to keep abreast of the possible hazards posed by their tobacco products?

MS. McGARRY: Objection. This is beyond the scope of the notice of the deposition.

A. At what period in time?

Q. Well, from the time --

From 1954 on.

A. No.

Q. B.A.T Industries, BATCO and BATUKE did not

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believe they had a duty to keep abreast of the possible hazards posed by their smoking products?

MS. McGARRY: Ms. Wivell, can you tell me where this is included in the notice that Mr. Gilbey is being produced in response to?

MS. WIVELL: Certainly. I'm going to go right on to ask if they kept files of those kinds of things and if they were reviewed.

MS. McGARRY: I don't --

The question isn't about the files, you're asking about a legal duty. I'm going to direct the witness not to answer on the grounds that it calls for a legal conclusion and on the grounds that it's beyond the scope of the notice of deposition.

MS. WIVELL: All right.

MS. McGARRY: If you want to ask about the topical files, you may.

MS. WIVELL: You cannot direct him to answer that question because you are not asserting privilege. Let me repeat the question.

MS. McGARRY: No. I'm going to direct the witness not to answer. You cannot take advantage of asking for a witness on a specific subject and go beyond that.

MS. WIVELL: Well the law is, in the United

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States, that I can ask questions beyond the scope of the deposition notice, so you cannot instruct him to answer.

MS. McGARRY: I have.

MS. WIVELL: Let me repeat --

MS. McGARRY: And I am standing with that instruction. We'll go on to your next question.

BY MS. WIVELL:

Q. Now sir, B.A.T Industries -- well, all right. Fine.

Sir, did B.A.T Industries, BATCO and BATUKE keep records of the possible hazards posed by their products, their tobacco products?

MS. McGARRY: Object to the form. You may answer.

A. I don't know they kept records specifically on -- on that -- on that purpose in -- in those terms.

Q. Well were files -- who -- I'm sorry, strike that.

Who would you ask whether any of the three BAT Group defendants kept files relating to the hazards of possible -- or possible hazards posed by their tobacco products?

A. I find the question vague, so I'm not sure who

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I'd ask. I'm -- I don't -- I don't know, to be honest.

Q. Well --

A. Depending on what specifically we would need to be looking for.

Q. Okay. Well what's vague about it, sir?

MS. McGARRY: Objection. The witness doesn't have to rephrase questions for you.

A. Can you read it back to me and I'll try and answer.

Q. Certainly.

Who would you ask whether any of the three BAT Group defendants kept files relating to the hazards of or possible hazards posed by their tobacco products?

A. This was --

You're subjectively analyzing hazards of the tobacco products, and I don't believe that those three entities would necessarily agree with your analysis or -- or categorize files under those headings.

MS. McGARRY: The question is just who would you ask to find out.

A. For B.A.T Industries, I would -- I would suppose I would start with David Wilson.

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Q. And for BATCO?
A. For BATCO and BATUKE, I would start with the company's secretary, Peter Clarke.
Q. Do you know, as you sit here today, sir, whether B.A.T Industries, BATCO or BATUKE kept files of possible hazards posed by their tobacco products?
A. If -- if for a moment I adopt your definitions, the answer may well be yes.
Q. Well I'm -- I'm not sure what you mean by my definitions. I'm --
A. Well when you -- sorry.
Q. I just asked, and I'll re-ask again: Do you know as you sit here today whether B.A.T Industries, BATCO or BATUKE kept files of possible hazards posed by their tobacco products?
A. By your definition, I'm talking about the word "hazards" particularly, I'm not sure files would be kept with that sort of categorization. I do know that all files relating to smoking and health that -- that have existed have been -- have been produced.
Q. Move to strike as non-responsive.
I don't think I've defined hazard, sir. How do you use that word?
A. A hazard is something that is in someone's way.
Q. All right. Can cause them harm?

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A. Potentially.
Q. All right. Using that definition, something that may be in someone's way or could possibly cause them harm, did BATCO, B.A.T Industries or BATUKE keep records of possible hazards posed by their tobacco products?
A. I don't know.
Q. You just don't know as you sit here; right?
A. No.
Q. Did you ask --
A. I think --
Q. Did you ask that as part of your deposition preparation?
A. No, because I wouldn't use the word "hazards."
Q. All right.
MS. McGARRY: I think there's a miscommunication. If you want, I can try to clear up. If you'd rather I don't interfere, that's fine.
Q. Well let me ask you this, sir: Did B.A.T Industries, BATCO and BATUKE keep records of pertinent scientific research relating to smoking and health?
A. I believe they did, yes.
Q. Okay. They kept records of what they learned; right?

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A. That's correct.
Q. All right. And did B.A.T Industries, BATCO and BATUKE do research in order to develop scientific knowledge about their products?
MS. McGARRY: Objection, beyond the scope, but I'll permit the witness to answer this one.
A. I believe BATCO did.
Q. All right. B.A.T Industries didn't do any research relating to scientific knowledge about its products?
A. No.
MS. McGARRY: Objection.
Q. BATUKE did no research relating to scientific knowledge about its products.
MS. McGARRY: Objection.
A. I don't believe so.
Q. All right. So the only records of research that were kept -- I'm -- strike that.
The only records of research that were done were records at BATCO; correct?
A. Correct.
Q. Now what are some of the different files that were reviewed for responsiveness to see if they contained smoking-and-health documents?
A. Are you asking me categories?

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Q. Yes.
A. So I am to try to categorize files.
I don't think I can categorize. As far as Southampton, which is the area where any such files related to this issue we're now talking about would be, all files remotely relating to smoking and health were reviewed.
Q. Well what were some of the different kinds of files that were reviewed for responsiveness to see if they contained smoking-and-health-related documents?
A. I can't be more specific in terms of everything from the Research & Development Center. I'm -- I'm not familiar -- familiar enough with the work of that center and its departments to be able to even tell you the five or six main departments.
Q. All right.
A. But I can say that all the files from those departments were -- were brought into the -- the process.
Q. Were any documents destroyed before the file review began, immediately preceding to the file review?
A. Not that I'm aware of, and only those that we would have mentioned in our interrogatory responses.
Q. All right. So you didn't -- I'm -- strike that.

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You don't really know as you sit here today whether any files or documents were destroyed immediately preceding the review process; do you?
A. I have to rely on what our due diligence told us on the interrogatory responses.
Q. Can you ask Mr. Livingston over lunch whether any files were destroyed before that 1986 review process began; in other words, immediately before the process, so they wouldn't be included, and report back to us?
A. I can ask.
Q. Thank you.
MS. McGARRY: Just for clarification, you mean in connection with the process?
MS. WIVELL: I said immediately before the process began.
Q. So they wouldn't be included in the process.
MS. McGARRY: Well I don't know if Mr. Gilbey is capable of answering that now. It's different than the question you posed to him.
Q. All right. Well let me ask you this: Will you ask Mr. Livingston whether any documents were destroyed immediately before the review process that began in 1986 so that they would not be included in that process?

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A. I can ask him.
Q. Thank you.
Now have you seen any of the documents that were produced by B.A.T Industries, BATCO or BATUKE?
A. I --
Yes, I have, yes.
Q. Okay. And you understand that some of those documents were kept in defendants' files for many years; right?
A. Yes.
Q. There's some -- some old documents among the collection; right?
A. So it seems, yes.
Q. Some more than 20 years old; right?
A. I believe so, yes.
Q. Okay. And some of the files that were produced contained documents that were written by employees more than 20 years ago; right?
A. Correct.
Q. And these old documents were kept because they were important to either B.A.T Industries or BATCO or BATUKE, or all three; right?
A. Not necessarily, no.
Q. All right. But these old documents were kept in the files of the companies; right?

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A. Correct.
Q. All right. And some of the types of documents which were produced in this case are these old documents that came out of the companies' files.
MS. McGARRY: Objection, asked and answered.
A. Apparently, yes.
Q. Now these files were from -- I'm sorry, strike that.
The documents which were produced in this case were from files which employees of B.A.T Industries or BATCO or BATUKE kept as part of their doing business; right?
A. Yes. Generally, yes.
Q. And there are file cabinets where individual employees kept files they regularly used as part of their jobs at one or the other of the three BAT Group defendants; right?
A. Yes.
Q. These files contained memos and reports written by employees about activities they were doing as part of their jobs for either B.A.T Industries, BATCO or BATUKE.
A. Yes.
Q. And there were also documents concerning their

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interaction with Brown & Williamson; correct?
A. I think so.
Q. Well you -- you understand that that is the case; don't you, sir?
A. Yes, I think that's right.
Q. And the files that were reviewed for responsive documents contained memos and reports written by employees of B.A.T Industries, BATCO or BATUKE about things they were doing at the time as part of their job -- as part of their jobs; right?
A. Yes.
Q. And they kept these files so that after a time they could go back and remind themselves of what they had done earlier; right?
MS. McGARRY: Objection.
A. I suspect so, yes.
Q. And the employees sent memos from -- to -- to one another from time to time?
A. I think so, yes.
Q. And those memos were produced to plaintiffs?
A. So far as we have them, yes.
Q. And the memos concerned what was being done as part of one employee's job for one or the other of the BAT Group defendants?
MS. McGARRY: Objection.

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A. Amongst other things, yes.
Q. And the employees at B.A.T Industries or BATCO or BATUKE would regularly write memos to each other about what they were working on?
A. Yes, I think so, to a greater or lesser extent.
Q. And these are part of the ordinary courses of doing business at the company; right?
A. I think so, yes.
Q. And these memos were then put, as standard practice, into defendants' files and kept; right?
A. I'm not sure there was always a standard practice, certainly until the '90s, but yes, I'm sure they found their way into files.
Q. And one of the purposes of these memos and reports was so that the employees could do their jobs better; right?
A. Yes.
Q. Now in searching for responsive documents, did B.A.T Industries, BATCO or BATUKE ask its employees to look at personal non-business papers?
A. Not personal papers, no.
Q. Okay. So it would be fair to say that the papers that were produced to plaintiffs as part of this document production process were business papers as opposed to personal papers; right?

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A. That's right.
Q. Now employees at B.A.T Industries or BATCO or BATUKE would regularly write reports about what they were working on at the time and send them to other employees; correct?
A. I think that's right, yes.
Q. And these would --
These records would be, as part of the regular course of business, kept in the files of the defendants?
A. Yes.
Q. Now sometimes employees from B.A.T Industries or BATCO or BATUKE would meet with employees of another BAT Group company; wouldn't they?
A. Yes, they would.
Q. And they would write up reports and minutes of those meetings; wouldn't they?
A. They would.
Q. Sometimes there would be memos concerning the subjects of those meetings; wouldn't there?
A. That's right.
Q. And those memos and reports and minutes would be circulated among the members of the -- the various people who attended those meetings; right?
MS. McGARRY: Objection, overbroad.

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A. I think very often, yes.
Q. All right. And those memos would be kept as part of the ordinary course of defendants doing business; wouldn't they?
MS. McGARRY: Object to the form.
A. Yes. I --
As I just said, I'm not sure there's any standard practice, but often the memos would be kept, yes.
Q. And those kinds of documents were produced in this case in response to plaintiffs' document requests; weren't they?
A. They were.
Q. All right. And sometimes memos from other cigarette companies or letters from other cigarette companies would find their way into the files of B.A.T Industries, BATCO or BATUKE; right?
MS. McGARRY: Objection.
A. I believe so, yes.
Q. And they were kept in the ordinary course of business in the files of those companies; right?
A. Yes.
MS. McGARRY: Objection. Which companies?
Q. Of the defendant companies, BATCO, BATUKE and -- and B.A.T Industries; right?

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A. Correct.
Q. All right. And sometimes B.A.T Industries, BATCO and BATUKE would receive documents from Brown & Williamson; wouldn't they?
A. I believe that's the case. That's the case, yes.
Q. And that's because there are cooperative pooling agreements between the various companies; aren't there?
MS. McGARRY: Objection.
A. That may be a reason. But certainly in B.A.T Industries' case, it would need to know what's going on in Brown & Williamson sometimes.
Q. All right. But you would also agree, though, that Brown & Williamson was a wholly-owned subsidiary of B.A.T Industries P.L.C.; correct?
A. At one time, yes.
Q. It is now; isn't it?
A. It is, yes. Not direct.
Q. And memos and reports that B.A.T Industries, BATCO and BATUKE received from Brown & Williamson would be kept in the ordinary course of business in B.A.T Industries, BATCO and BATUKE files; right?
A. Yes.
Q. And that's because there was regular interaction

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between the employees of B.A.T Industries, BATCO, and BATUKE and Brown & Williamson; right?

MS. McGARRY: Objection, beyond the scope of the notice of the deposition. I'll permit Mr. Gilbey to answer this question.

A. To a greater or lesser extent for each of the three companies, yes.

Q. Now there were also department files which were reviewed as part of the production of documents in this case; weren't there?

A. Yes, indeed.

Q. For example, you gave us the Southampton R&D department as one early example of files that were collected, reviewed and then produced; right?

A. Correct.

Q. Were there other departments that you're aware of, distinct departments, whose files were reviewed?

A. Many is -- is the answer. We started off on the -- on the premise that -- that all departments would -- would be looked at. But then one looks at particular departments which really can have nothing to do with the issues and -- and exclude those. And some departments were indeed excluded by agreement with the plaintiffs.

Q. All right. Which departments were excluded?

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A. I can think of the --

I think some of the accounting departments for BATCO. The competitive research unit.

(Discussion off the stenographic record.)

A. One or two others, which are actually specified in -- in correspondence in the spring of 1996. But with the --

The point is, we started off looking at all departments.

MS. WIVELL: It's now 12:00 o'clock and this is probably a good breaking point. Would you like to break for lunch?

MS. McGARRY: That's fine.

THE WITNESS: Fine.

MS. McGARRY: Okay.

THE REPORTER: Off the record, please.

(Luncheon recess taken at 12:00 o'clock noon.)

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AFTERNOON SESSION

(Deposition reconvened at 1:18 o'clock p.m.)

BY MS. WIVELL:

Q. Sir, before we took a lunch break today, we were talking about the files of B.A.T Industries, BATCO and BATUKE generally, the files that were reviewed for production of responsive documents in this case; correct?

A. Correct.

Q. Now if the average citizen wanted to go in and see those files, would they be allowed to do so?

A. The file is in situ in the offices as they were way back through the years?

Q. Yes.

A. No.

Q. Why not?

A. Because they're business files, and I know very few businesses which would let someone come off the street and look at their files.

Q. All right. Did B.A.T Industries, BATCO and BATUKE have security for those files?

A. I believe in a -- in a loose sense. We -- we're talking going back to '86, perhaps, are we, now?

Q. Yes, or even before then.

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A. I -- I think there were --

There was a security policy, I don't know what it was, but I would be very surprised if there was no security.

Q. All right. Well you work today for BATCO; right?

A. Indeed.

Q. Do you have an employee badge that you wear?

A. Yes, I do.

Q. Do all employees have a badge?

A. Yes, they do.

Q. All right. Has that been the policy at BATCO for -- a longstanding policy?

A. I don't know.

Q. Are badges required to be worn by B.A.T Industries employees?

A. Yes, they are.

Q. Are badges required to be worn by BATUKE employees?

A. Yes. I think we, for this purpose, we can regard BATCO and BATUKE together.

Q. All right. So it would be fair to say, wouldn't it, that if the average person off the street walked in and tried to go through the files of B.A.T Industries, BATCO and BATUKE, they would be stopped

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because they wouldn't have a -- an I.D. badge; correct?
A. That's correct.
Q. All right. Now the files that were searched for responsive documents, these were files that were not originally in places that a person could walk in off the street and look at them; were they?
A. Correct.
Q. Is there some kind of additional building security, such as a guard or a watch person, who is stationed at the entrance to the various buildings that these documents were stored in?
A. There -- there are today. I don't know what the situation was going back.
Q. All right. But it would be fair to say, sir, wouldn't it, that security for the company documents that were produced to the plaintiffs in this litigation was a concern to the defendants of long standing; wasn't it?
A. I think so. Not necessarily associated with the litigation, but just as a -- a business risk.
Q. That's because the defendants considered the materials in these documents to be highly valuable trade information, right?
A. Certainly in part.

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Q. All right. And they were concerned, in addition to the person off the street walking in, they were concerned about other tobacco manufacturers getting ahold of some of their information and perhaps converting it to their own use; right?

A. I think that's a fair comment.

Q. All right. And so, to the best of your knowledge, there has been security to prevent that sort of thing for these documents for a long time; right?

MS. McGARRY: Objection, asked and answered.

A. I believe that's the case.

Q. To your knowledge, has there ever been any breach of the security system since it was established where outsiders broke in and got hold of some of the files?

A. I can't recall any instances I've heard of.

Q. All right. So would it be fair to say, to add something to the files that the documents produced by the defendants in this case came out of, you had to be someone working for one of the defendants?

A. I would hope that's the case, yes.

Q. All right. And you've never heard of any situation where someone from outside of one of the

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three companies came in and added something to the files; right?

A. Right.

Q. Now sir, I think we talked about many of these documents were produced -- I'm sorry. Strike that.

We talked about the fact that many of the documents that were produced were authored by employees of B.A.T Industries, BATCO and BATUKE; right?

A. Yes.

Q. All right. And the people that authored those documents had some knowledge of the matters that were contained in those documents, didn't they?

MS. McGARRY: Objection, overbroad, calls for speculation.

A. I think it probably follows, yes.

Q. And the documents were created by people who had contemporaneous knowledge of the subjects they were writing about.

MS. McGARRY: Same objection.

A. I suspect that's the case.

Q. All right. Well have you seen any documents where that wasn't the case?

A. Not that I can think of, no.

Q. And in your preparing for this deposition, you

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did not learn of any cases where fake or fraudulent documents were produced by the defendants to the plaintiffs in this litigation.

A. No.

Q. Okay. So basically the documents that were produced by B.A.T Industries, BATCO and BATUKE to the plaintiffs in this case are authentic; right?

MS. McGARRY: Objection, calls for a legal conclusion, overbroad, calls for speculation. The witness may answer.

A. To the best of my knowledge, yes.

Q. And you're unaware of any non-authentic documents that were produced to the plaintiffs in this case.

A. I'm unaware.

Q. Before lunch I asked you some questions that you were going to try and find out the answers to and report back after lunch. Do you recall that?

A. I recall.

Q. All right. One of those questions was whether, immediately before the 1986 production -- I'm sorry -- collection of BATCO R&D documents, were any documents destroyed which were not included in the BATCO review.

MS. McGARRY: That isn't the question you

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asked him to get the answer to, but he can answer this one if you'd like. Or do you want to go back to what you asked him to get?

Q. Sir, let me ask you this: Immediately before the 1986 production or collection of BATCO R&D documents, were any documents destroyed which were not included in the BATCO review?

A. I don't specifically know of any. I can't be categorical that there were none.

Q. All right. Could you turn to Exhibit 476.

THE REPORTER: They're in order.

MS. McGARRY: I'll find it.

Q. Would you turn to page eight and look at answer 1.C.. Do you have it, sir?

A. Yes, indeed.

Q. It says there, "In or about July of 1985, approximately three cases of files belonging to Dr. D. G. I. Felton of BATCo's Research Planning Department remained in storage for a period of time following Dr. Felton's retirement. After it had been determined that the files were of no use to any current employee, the files were sent for destruction. The Research Planning files contained some correspondence, memorandum" -- or "memoranda authored by Dr. Felton regarding publicly reported

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scientific developments, and other publicly available scientific research materials. The persons most knowledgeable about the destruction of the files is Mrs. A. Wilford and Mr. Raymond E Thornton, both retired BATCo employees. Dr. Felton is deceased."
Did I read that correctly?
A. You did.
Q. So it is fair to say that before the review of the BATCO R&D files, the files that are referred to here of Dr. Felton were destroyed; weren't they?
A. Approximately a year or so prior, yes.
Q. All right. Is there any record of what was contained in those files?
A. Not that I'm aware of, no.
Q. What was Mr. -- or Dr. Felton's -- I'm sorry. Strike that.
Dr. Felton was R&D manager for BATCO; wasn't he?
A. I think that's right, yes.
Q. And he was the smoking and health advisor; wasn't he?
A. I -- I think that's right. I'm not absolutely sure.
Q. He was also a consultant to BATCO after his retirement; wasn't he?
A. I don't know.

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Q. So you can't tell us if -- if responsive documents were in Mr. -- in Dr. Felton's files and then were destroyed at or around the time of July 1985; can you, sir?
A. I can't tell you that, no.
Q. But it would be reasonable to assume, considering he was smoking and health advisor to BATCO, and R&D manager, that there were responsive documents which were destroyed at that time; correct?
A. It's certainly possible, yes.
Q. Well it's highly likely, in fact, in light of his position as R&D manager and smoking and health advisor; isn't it, sir?
MS. McGARRY: Object to the form. You may answer.
A. It's certainly likely that Dr. Felton would have generated material which would be very relevant. Whether these three particular files contained such material, I just don't know.
Q. Were any other of Dr. Felton's files destroyed so they were not included in the 1986 collection of Southampton R&D files?
MS. McGARRY: Object to the question, assumes facts not in evidence, misstates the prior testimony. You may answer.

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A. I just don't know.
Q. All right. This is one of the questions -- one of the items I had asked you to determine from Mr. Bonner what he did to generate this answer; isn't it, sir?
A. Oh, that's right, yes.
Q. All right. Did you talk to Mr. Bonner over the lunch break about this answer?
A. Yes, I did.
Q. And what did you learn he had done in order to generate this answer?
A. What happened was the process that Simpson Thacher and indeed Lovell -- Lovell White went through was to set up searches of the databases available to see -- around the subject of destruction, destroy, transfer, and permutations on those words, to as broadly as possible see what hits came up on those searches. I understand a great many hits came up initially. And the teams from both Lovell and from Simpson Thacher then went through those hits to see what -- what they would see and dismissed many of the first hits as being irrelevant; they -- they -- they weren't leading to what this interrogatory was seeking. Where further information was necessary, they would go to the -- to the -- the

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files themselves, and where the files couldn't provide a full answer, the teams would go and speak to the people who it appeared from the files might be able to assist.

Q. Did in this particular case they try and find out who had destroyed Dr. Felton's documents?

A. I believe they did, yes.

Q. And who had destroyed Dr. Felton's documents?

A. I don't know. I don't --

I'm not sure we found out the answer to that.

Q. Were they destroyed by lawyers?

A. Oh, I doubt it very much. I don't -- I don't know who destroyed them. I don't know in fact they were destroyed physically or just lost.

Q. You just don't know one way or the other.

A. I just don't know, no.

Q. All right. Let's go up to the top of the page -- or I'm sorry, to the first entry, A. It says there that "In or about January 1986, several files containing published materials" -- I'm sorry. Strike that.

There it says, "In or about January 1986, several files mainly containing published materials from the U.S. Department of Agriculture on the extraction of nicotine, kerosene extraction, acid

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treatment and vacuum distillation were destroyed. The person most knowledgeable about the destruction of the files is David Molyneaux...."

Am I pronouncing --

A. Molyneaux, I think.

Q. "...Molyneaux, a retired BATCo employee." Did I read that correctly?

A. Yes.

Q. All right. Sir, it says "several files mainly containing published materials." In addition to the published material, what other materials were destroyed on or about January 1986?

A. I think we will never know because, by -- by their nature, we can't go direct to the files, so we're -- we're looking for the next best source of information. I think the response here was the best possible response we can give for the residual information available, so I don't think anyone can tell us -- tell us what else was there.

Q. Was David Molyneaux interviewed as a result of this search?

A. I don't know specifically about that.

Q. You just don't know as you sit here whether --

A. No, I don't.

Q. He's still alive.

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A. Apparently, yes. I don't know.
Q. Was --
Were any of these files concerned with Y1?
A. I have absolutely no idea.
Q. You don't know what Y1 is; do you?
A. I -- I --
MS. McGARRY: Objection. You may answer.
A. I do know what Y1 is.
Q. Was David Molyneaux involved with Y1?
A. I have no idea.
Q. I understand from counsel, we talked before the beginning of the afternoon session here, that you intend, on some of the answers that you agreed to report back, to do a written report; is that right?
A. Yes, because that's largely the -- the names you requested from me, and I don't think I can remember them all.
Q. All right. As part of that written report, will you also answer whether David Molyneaux was involved in Y1?
MS. McGARRY: Objection, that's beyond the scope of the deposition. If you want to know if he was interviewed in connection with the interrogatories, the list of people interviewed is at the beginning of the interrogatories. So no, Mr.

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Gilbey will not be providing you with that information.

MS. WIVELL: Well I'm trying to find out whether any of the files containing materials regarding the U.S. Department of Agriculture concerned Y1. Will you find that out and report in the written report, sir?

MS. McGARRY: If there's any more information --

I'm quite certain if there was any more information than what's stated in A., it would be in A..

MS. WIVELL: Are you --

MS. McGARRY: If Mr. Gilbey is able to ascertain we know any more specific information about what was in those files other than what's disclosed in paragraph A., we will report that to you tomorrow.

Q. I'm asking if you will find out -- if you will agree to ascertain whether any of the files containing materials that are referred to here contained materials concerning Y1. Will you agree to do that and report in writing?

A. I will agree --

MS. McGARRY: Objection. I wasn't

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necessarily going --

The witness isn't necessarily going to prepare any written reports to you other than a list of solicitors involved in various aspects of document production about which you asked.

MS. WIVELL: Then I would like you to produce a witness right now who will answer whether the files contained materials regarding Y1. I have a right to know that, and you have a right to -- or you have an obligation to produce a knowledgeable witness.

MS. McGARRY: We've produced the most knowledgeable witness. If the information isn't available, it cannot be given to you.

MS. WIVELL: All right. Will you --

Let's take a break, and you talk to Mr. Bonner and the rest of the folks and see whether any of the files that are referenced here concern Y1.

MS. McGARRY: No, we're not going to take a break now. I told you that tomorrow, if we have any more specific information about what's in those files, it will be provided.

MS. WIVELL: Well I would like to know and I would like to know the answer before this deposition is over, and this deposition may end

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today, so I would like to take a break and have you ascertain whether any of the materials that are referenced here in 1.A. concerned Y1.

MS. McGARRY: Okay. We'll be taking a mid-afternoon break, or are you going to end --

MS. WIVELL: No, we're going to take a break right now so I can get an answer to the question; otherwise, I want you to produce a witness --

I don't care whether we swear in Mr. Bonner or Mr. Livingston, but I want to know the answer to that question, and I am entitled to know the answer to that question, and I am entitled to a knowledgeable witness. So we can take a break. You can try and find out the answer to that question and report back.

MS. McGARRY: If your speech is over, Ms. Wivell, I would prefer to wait until it's a natural breaking point.

MS. WIVELL: We can --

MS. McGARRY: We keep interrupting. Because you aren't going to have the answers to each little question you're going to ask about this document.

MS. WIVELL: Fine. Let's take a break. We

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can try and get the answer to this one.

THE REPORTER: Off the record, please.

(Recess taken.)

BY MS. WIVELL:

Q. Sir, during the break, did you find out whether any of the files referred to in Exhibit 476 at 1.A. which were destroyed concerned Y1?

A. I wasn't able to find out whether or not they did, because the extent of our knowledge about those files is as stated in -- in the response there.

Q. Was David Molyneaux involved in Y1?

A. I don't know whether David Molyneaux was. I know David Molyneaux was spoken to about this particular -- these particular files.

Q. He was spoken to.

A. He was.

Q. Sir, would you turn to section E. on page 10 of Exhibit 476. There it references the fact that in May 1992, BATCO's Millbank offices in London were closed and relocated to a current address at Staines, England, and at that time the employees were encouraged to pare down their files by as much as 50 percent. That's the gist of this answer; isn't it, sir?

A. That's right.

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MS. McGARRY: Take time to read the whole paragraph before you answer, Martyn.

Q. Now sir, were smoking-and-health-related documents destroyed as part of this paring-down process?

A. I -- I don't believe so at all, because the -- the Millbank offices were the -- the -- really the -- the main offices of the company involving secretarial, there was some marketing processes there, but the -- the smoking-and-health documents were -- were really kept at Southampton. And this -- this event here had no -- I don't believe had any effect on destroying smoking-and-health documents.

Q. Sir, there were documents contained there regarding the interaction between BATCO and B.A.T Industries; correct?

A. I don't know for a fact, but I think that's probably likely, yes.

Q. All right. And were documents concerning the interrelationship of the two companies destroyed as part of this process?

A. The answer's got to be very possibly.

Q. Would you turn to page 11 of Exhibit 476. There it says, "In August of 1995 it was discovered that back-up magnetic computer tapes back to July 1994,

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for the BATCo R&D VAX computers that should have been subject to the hold order from July 1994, were actually not retained -- accidentally not retained contrary to the direction given in the document retention schedules for Southampton IT Department." Did I read it correctly so far?

A. Yes, I think so.

Q. All right. What is the IT department?

A. Information Technology.

Q. And that refused -- refers to the computer department?

A. Basically, yes.

Q. All right. What was the subject of the material on these tapes?

A. I know no more than -- than we've recorded in -- in that -- that response there.

Q. All right. Did you learn what Mr. Bonner did to come to this answer?

A. Well I -- I will repeat, what I know was the -- the general way that Simpson Thacher and Lovell's approached, which was to discuss with people who would have knowledge, and I -- I think in this case, obviously, Dr. Frank Marsh would be the correct person, and no doubt the information there reflects what Frank Marsh said.

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Q. Sir, I'm kind of curious. Before lunch you told me Mr. Bonner had done this, and now you're telling me that Simpson & Thacher and Lovell had come to draft these answers. Are you telling me that Mr. Bonner did not do the investigation himself in coming to the answers that are in Exhibit 476?

A. I think I said it before lunch, in response to several of your questions I mentioned Pat Bonner as -- as being the person. In fact it -- it wasn't physically possible for -- for Pat Bonner to do everything, and it was a team of people, of which Pat was an important part.

Q. Now these documents -- or I'm sorry.

Exhibit 476 also discloses that additional computer files at B.A.T Industries were not produced to the plaintiffs; correct?

A. Where are you reading from?

MS. McGARRY: I'm sorry, what are you referring to?

Q. 2.A.

A. 2.A.

Yes, I see 2.A., yes.

Q. In other words, B.A.T Industries has not produced 207 paper files, and 383 computer disk files and 411 computer disks were actually missing and

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could not be located; correct?
A. That's correct.
Q. Now if you go down to 2.B. under files or documents that cannot be located, there is reference to a June 1963 letter received by H. D. Anderson, a retired BATCO employee -- employee, from Dr. Schmal of Bonn University relating to benzpyrene in tobacco smoke. Says the letter cannot be currently located. Correct?
A. Yes.
Q. All right. Was it --
Was H. D. Anderson interviewed in order to determine the existence of this letter?
A. I'm not sure. I -- I think he was.
Q. How do we know that the letter even existed?
A. That's because it -- it would have -- I --
I explained to you before that there was this -- the search of databases, and the letter would have shown up possibly -- I mean it is a bit of speculation, but a very likely speculation -- speculation that the letter was probably referred to in something else, which was picked up and followed through, and we got the answer that's shown here.
Q. You referred to databases that were available. What databases are you referring to?

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A. Internal and external. Primarily the -- the Rev A, the Rev B databases.

Q. All right. We've talked about Rev A; haven't we?

A. I think so, yes.

Q. All right. What's Rev B?

A. Let me just explain again to make sure. Rev A is really all the -- the first phase of research and development files, the '86 set if -- if -- if you like. Rev B is the database that was created when -- from 1994 onwards when we started collections at B.A.T Industries and then BATCO.

Q. Now are those the internal databases or the external databases?

A. These are the databases kept by Lovell White Durrant.

Q. All right. So when you referred to internal and external databases, Rev A and Rev B are external databases?

A. Yes.

Q. All right. What are the internal databases that you're referring to?

A. I think the Lotus Notes databases were searched, and it may be -- it may be the INTERBAT databases were searched. I'm not absolutely sure, but that's

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the only other internal one that comes to mind at the moment.

Q. All right. INTERBAT was a synopsis of various research and development studies which had been done and computerized and was available to all of the CAC companies; wasn't it?

A. I'm not sure how widely available it was. I -- I understand it was -- it was a generic expression for, I think, six separate databases.

Q. What --

A. Certainly primarily, I think, to do with the R&D side of things. I'm not sure how widely dissemination was.

Q. All right. What's --

Why don't you tell us what you understand the INTERBAT databases to be.

A. Your description is quite good. I mean I -- I --

My understanding is that they were almost like a notice board of information for -- for primarily research and development.

Q. Would it be fair to say, then, that INTERBAT was a synopsis of work that was contemplated or under way at one of the BAT Group companies, and then was posted on this computer system that was available to

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other BAT Group companies?
A. I'm not -- I'm not sure that's -- that's entirely accurate. I mean I'm not -- I'm not sure the whole -- the whole INTERBAT episode. I think it was a notice board of research that had certainly been done, so that I think, you know, people with access to the database could -- could see on a -- on a checklist anything that was interesting to them. And I think it also dealt with external research that was done so that, again, those people could have access to other people's research.
Q. Well sir, you -- you mentioned there were six separate databases as part of INTERBAT. What were those six separate databases?
A. I don't know the titles. I -- I do know that we provided a description in -- in one of our responses to you, and I think you've got examples of -- or maybe that -- maybe three of the whole databases, and the other three were deemed of -- of no interest. But I really don't know the -- the actual content of those individual databases.
Q. Well do you know the titles of them?
A. No, I don't, no.
Q. Now you mentioned the Lotus Notes database. Who created that?

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MS. McGARRY: Databases.

A. I believe the Lotus Notes databases are the databases used on a day-to-day basis by -- by the BATCO employees.

Q. Were that or --

Were those databases searched?

A. I think they were.

Q. Were they produced?

A. Don't know the answer.

Q. Are there any other databases that have been created concerning the documents relating to smoking and health of B.A.T Industries, BATCO and BATUKE?

A. Yes.

Q. What other databases have been created?

A. Some databases have been created purely pursuant to the -- the production and collection for -- by the -- by the lawyers for -- for their purposes.

Q. When were those collected --

When were those created?

A. At various times. I think it was an evolving process. I mean I couldn't give you dates as to -- as to when they were created.

Q. Were they in existence before the suit by the State of Minnesota and Blue Cross Blue Shield was brought?

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A. One of -- sorry.

I think one or two would have been. One or two most certainly would have post-dated that.

Q. And what are they called?

A. I have in mind IVDI, CDIS and KIR.

Q. What does IVDI stand for?

A. I'm not sure. I'm -- I'm not sure "I" means anything literally. I don't -- I don't know what it stands for.

Q. All right. What does CDIS mean?

A. The -- it's short for -- the "C" is Critical and the "D" is Document, I don't know what the other two letters stand for.

Q. And what does KIR mean?

A. I think the "K" is Key. I'm not sure what the other two letters mean.

Q. Which of these were in existence before the Minnesota lawsuit was brought?

A. I think only the IVDI.

Q. Are these programs, IVDI, CDIS and KIR, Lotus Notes databases that you were referring to?

A. No, they're not, no.

Q. All right. Going back to the Lotus Notes databases, do they have a name?

A. No. The databases would have been -- I mean as

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you probably know, Lotus -- Lotus Notes is a -- a wide system, and I think when we talk about the databases there, they would have been databases used within the Lotus Notes system for particular purposes by particular departments.

Q. All right. Isn't it true that in addition to the documents that we've talked about so far, that B.A.T. has been unable to determine whether Dr. Green took documents with him when he left the company?

MS. McGARRY: I object to the term "B.A.T." as ambiguous.

A. I think we responded somewhere that -- that that was the case with Dr. Green, yes.

Q. All right. And Dr. Green was a BATCO employee; wasn't he?

A. I think that's right, yes.

Q. He was head of research and development at BATCO; wasn't he?

A. I think you're right.

Q. And has it been determined that he did take documents?

A. I'd have to look at the specific response we gave about his files to --

Q. Could you look at twelve, C., please.

A. What page is that on?

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Q. Twelve, C.

MS. McGARRY: It's on page 12.

A. Yes, I've read that.

Q. All right. It has been determined that Dr. Green took documents with him concerning smoking and health; is that right?

A. Well the actual response said it's not been determined whether Dr. Green took the only or sole copies or whether all the documents taken are relevant to smoking and health.

Q. Move to strike as non-responsive.

Sir, my question is: It has been determined that Dr. Green took documents with him; hasn't it?

A. Yes.

Q. All right. Thank you.

Now additionally, this interrogatory answer concerns files belonging to a John Luke, a BATCO employee, relating to slim cigarettes; correct?

A. Yes.

Q. Now isn't it true that those documents concern the biological activity of slim cigarettes?

A. I have no idea.

Q. Sir, isn't it true that slim cigarettes are -- those with a diameter less than the average cigarette, are biologically less active?

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MS. McGARRY: Objection, beyond the scope. I'm going to look at that again before I decide whether I'm going to let the witness answer.

I'm going to direct the witness not to answer.

MS. WIVELL: On what grounds?

MS. McGARRY: It's beyond the scope. This is a document-custodian deposition and a deposition concerning Category II collection and production. Mr. Gilbey is a lawyer. He's not here to answer your questions about biological activity of cigarettes.

MS. WIVELL: I didn't hear a privilege objection, and that is the only grounds for which you can instruct the witness not to answer. So let me repeat the question.

MS. McGARRY: No, Mr. Gilbey won't be answering the question. You may move on, Ms. Wivell.

Q. Sir, isn't it true that slim cigarettes are those with a diameter -- I'm sorry, strike that.

Sir, isn't it true that slim cigarettes, those with a diameter less than normal cigarettes, have a lower biological activity?

MS. McGARRY: I direct the witness not to answer. Move on, Ms. Wivell.

Q. Sir, isn't it true that the reasons these files from Mr. John Luke are missing is that they relate to

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the lower biological activity of slim cigarettes?

MS. McGARRY: I object to the form of the question. You may answer if you know why the files are missing.

A. The answer is going to be no, because we've not suppressed any files for such intentions.

Q. Sir, could you turn to page 474.

MS. McGARRY: Page 474?

MS. WIVELL: I'm sorry, Exhibit 474.

(Exhibit 474 handed to the witness.)

Q. Would you turn to page eight, C., please. At the top it -- there is an answer concerning a tape, a videotape that was recorded concerning the behavior of smoke from the St. Moritz product; correct?

A. Yes.

Q. Isn't it true that that tape was destroyed so it would not be used in evidence?

A. I certainly don't make that assumption, no.

Q. Sir, isn't it a fact that Colin Greig directed that that tape not be produced in evidence?

A. I certainly don't know that as a fact.

MS. McGARRY: Just for the record, this is the answer that was corrected, and that should be 1983, not 1988, in the first line on page eight.

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for identification.)

BY MS. WIVELL:

Q. Sir, showing you what has been marked as Plaintiffs' Exhibit 477, am I correct that this is a memo from Colin Greig dated 3-31-83?

A. Yes.

Q. Now counsel just made a statement that answer C. was corrected so that the correct date is 1983; isn't it, sir?

A. Yes, indeed.

Q. All right. And the date of this document from Colin Greig is 1983; isn't it, sir?

A. Yes.

Q. For the record, Exhibit 477 is Bates numbered 100515104; correct?

A. Correct.

Q. You've seen this document; haven't you, sir?

A. Yes.

Q. And you --

MS. McGARRY: Just for the record, through 5105. It's a two-page document.

Q. And you have --

You have read this document; haven't you?

A. Yes.

Q. And this document says, in part, "It would be

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very unfortunate indeed if GR&DC were linked with its production, and I suggest that once you have your facilities you should erase the tape. Under no circumstances whatsoever should it be used as evidence." Correct?

A. Yes, indeed.

Q. And "Under no circumstances whatever should it be used as evidence" is underlined; isn't it, sir?

A. Yes.

Q. You understand that this tape was destroyed at or about the time this memo was written; correct?

A. I -- I believe that's the case. I have no reason to doubt that.

Q. All right. And this is the tape that is referred to in Exhibit 474, C. on page eight; isn't it?

A. I think it probably must be, yes.

Q. And in fact it refers to the fact that Colin Greig had prepared the enclosed tape and then sent it to Paul Marley; right?

A. Yes.

Q. And it refers to B.A.T. Benelux, is that right?

A. Yes, that's right.

Q. That's the Belgian subsidiary?

A. That's correct.

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Q. It also refers --

Mr. Greig also refers to the fact that it should be shown only to those who have a, quote, need to know; correct?

A. Yes.

Q. And this is one of the documents -- sorry.

This tape is one of the items which has not been produced to plaintiffs in this litigation; right?

A. As we reported, yes.

Q. Now sir, isn't it true that even before the steps were taken in 1976 to try and collect B.A.T. documents, there was a process for destroying confidential information?

A. I believe you mean 1986.

Q. I'm sorry, yes. 1986, there was a process that was available for the destruction of confidential information; right?

MS. McGARRY: Object to the form of the question. You may answer.

A. I think there's a -- there's certainly an ambiguity in your question. There is a --

As I understand it, there was a process for -- for destroying those documents no longer needed which were confidential, which is rather different to a -- a process whereby confidential documents were

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destroyed per se.

(Plaintiffs' Exhibit 478 was marked for identification.)

BY MS. WIVELL:

Q. Sir, this is a document Bates numbered 105363163; correct?

A. Yes, indeed.

Q. And it concerns destruction of confidential papers; doesn't it?

A. It does.

Q. Dated July 6, 1979.

A. That's right, yes.

Q. It's directed to all professional staff.

A. That's right.

Q. And it says, in part, "Personnel requiring the destruction of Confidential papers should give them to Mr. R. Norman (or Mr. R. W. Batt) who will then be responsible for storing them in a locked cupboard until transport can be arranged to take them to the Council incinerator for burning;" correct?

A. Yes.

Q. All right. And sir, isn't it a fact that confidential smoking-and-health documents were destroyed pursuant to these procedures?

A. I don't know that as a fact. This tells me that

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this was a process for destroying papers designated as confidential.

Q. So you just can't tell us as you sit here today one way or the other whether confidential smoking-and-health documents were destroyed pursuant to this memo.

A. I can't tell you --

MS. McGARRY: Objection.

A. I can't -- I can't tell you for a fact, no.

Q. Sir, isn't it true that in approximately 1983 and thereafter, that B.A.T., BATUKE and B.A.T Industries took steps to make sure that sensitive material did not fall in the hands of plaintiffs' lawyers by making sure that it didn't get to Brown & Williamson?

MS. McGARRY: Object to the form of the question. By B.A.T. do you mean BATCO?

MS. WIVELL: Let me rephrase the question.

Q. Sir, isn't it true that after the second wave of smoking-and-health-related litigation was started in the United States, that B.A.T Industries, BATCO and BATUKE took steps to make sure that sensitive materials did not fall into the hands of plaintiffs' lawyers by making sure they didn't get to Brown & Williamson?

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A. I'm not sure what the motive was. There was a change in procedure between communicating documents with Brown & Williamson that I'm -- I'm -- I'm aware of.

Q. You've seen memos concerning that change of procedure during your preparation for this deposition; haven't you, sir?

A. That's right.

MS. WIVELL: Mr. Stirewalt, could you get out Exhibit 65. I'm sorry -- one moment, please.

Exhibit 72.

(Exhibit 72 handed to the witness.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked previously as Plaintiffs' Exhibit 72, this is a document dated January 3rd, 1985, Bates numbered 104682362; correct?

A. Sorry. Would you repeat the Bates number?

Q. 104682362.

A. I seem to have a different number.

Q. All right.

A. My digits finish with 833.

Q. All right. Why don't you read the Bates number of the document.

A. 107355833.

Q. All right. This is a memo from J. W. -- I'm

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sorry, M. J. Hardwick dated January 3rd, 1985; correct?

A. Yes.

Q. All right. And it's to the communications group; right?

A. Yes.

Q. At B.A.T. Group Research & Development Center.

A. Yes.

Q. Now that's Southampton; isn't it?

A. That's correct.

Q. All right. And according to this memo, sensitive information was not to be sent to Brown & Williamson; correct?

A. Doesn't say what you just said.

Q. All right. Well it says, in part, "...I wish to remind you of the total necessity of being aware of the sensitivity concerning information -- sending information to Brown & Williamson...." It says that in part; doesn't it?

A. It does.

Q. And then it goes on to say a little bit later down the page, "Where any GR&DC report is considered sensitive, the names of the usual Brown & Williamson recipients must not be included on the distribution list;" right?

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A. Yup.
Q. All right. Now G.R. & D.C., that is the research and development lab at Southampton; right?
A. That's the center, yes.
Q. And as a matter of fact, you're aware that there was an attempt to make sure that none -- I'm sorry, strike that.
You're aware that there was an attempt to make sure that sensitive material was not sent to Brown & Williamson at this time; correct?
MS. McGARRY: Objection, misstates the prior testimony.
A. There was a change in procedure for -- for sending stuff to Brown & Williamson. That I'm aware of.
Q. And as a matter of fact, the procedure that was entered into was that Brown & Williamson was taken off the distribution list; right?
A. I think that's right, yes.
Q. And then the materials were actually sent to a lawyer in Louisville, Kentucky, where Brown & Williamson is headquartered; right?
A. I think that's right.
Q. All right. And that person was named who?
A. Mr. Maddox.

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Q. Mr. Maddox at Wyant Tarrant & Combs; right?
A. That's correct.
Q. And isn't it a fact that the reason that change of procedure took place was to keep sensitive documents out of the hands of plaintiffs' attorneys in the United States in smoking-and-health litigation?
MS. McGARRY: Objection, asked and answered. You may answer again.
A. I can't speak for the motive at that time.
Q. You just don't know.
A. I don't know.
Q. Well when you saw this document, did you ask anybody, any of these four lawyers who are sitting here, why this procedure where documents from research and development were sent not to Brown & Williamson but to a lawyer in Louisville, Kentucky?
MS. McGARRY: You can answer that "yes" or "no."
A. No.
Q. Were you curious at all about why all of a sudden documents weren't going to Brown & Williamson any more, but were going to some lawyer in Louisville, Kentucky?
A. Yes.

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Q. Did you ask anybody about why that occurred?
A. No.
Q. But you understand that there were certain procedures that were established after Mr. Hardwick's directive concerning how to send information to the United States; right?
A. I think that's right, yes.
(Plaintiffs' Exhibit 479 was marked for identification.)
BY MS. WIVELL:
Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 479, this is a document Bates numbered 104682360; correct?
A. That's right.
Q. And this document is dated January 30th, 1985.
A. Correct.
Q. In other words, it follows Exhibit 72 date-wise.
A. It -- it does.
Q. Now this is also from Mr. Hardwick; right?
A. Correct.
Q. And you understand what Mr. Hardwick's position was at Group Research & Development Center at Southampton; don't you?
A. I'm not absolutely sure what his title was, no.
Q. Okay. (Coughing) Pardon me.

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But this document concerns procedures that were established pursuant to Mr. Hardwick's direction for sending information and written materials to the United States; right?

A. So it seems, yes.

Q. Just so we're clear, --

A. Hmm.

Q. -- this is for sending materials to Brown & Williamson; right?

A. It says "INFORMATION, MATERIALS, FOR THE U.S.A.," and it mentions B&W, yes.

Q. Yes. And where it mentions B&W is under number one where it says "R&D REPORTS;" right?

A. Yes.

Q. And then under (d) it says, "The -- The recipient list must not contain the name of any Brown & Williamson person, nor that of Maddox or of his company;" right?

A. Yes.

Q. And then under point 1.2 "For the United States," it says on receipt of the copy of the memo from Millbank above, three copies of the report should be sent to the U.S.A. and they should be sent to Robert Maddox. Have I paraphrased that correctly?

A. Yes, you have, yes.

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Q. And you understand that that procedure was carried out; right?
A. I think so.
Q. And isn't it a fact that that procedure was done so that there would be no way that anyone could trace these documents back to Brown & Williamson to show that they had possession of research and development documents from BATCO?
MS. McGARRY: Objection. This is the third time the question has been asked.
A. I don't know the motive at this time.
MS. McGARRY: Ms. Wivell, could I ask you to keep your voice down. You're sitting right across the table, and I think the witness can hear you without you raising your voice.
MS. WIVELL: I'm not raising my voice.
Q. Now sir, it goes on to say, under "...World-Wide Distribution," gives information about the kind of material that is not to be sent to Brown & Williamson but is to be sent to this lawyer in Louisville; correct?
MS. McGARRY: Take your time to read the document.
A. I think that's correct, yes.
Q. All right. And among the things that were to be

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sent to the lawyer and not to Brown & Williamson were all G.R. & D.C. research programs; right?

A. That's listed there, yes.

Q. All right. Just --

Just so the ladies and gentlemen can understand, G.R. & D.C. at Southampton was the basic biological research center for B.A.T Industries; wasn't it?

A. Not for B.A.T Industries. It was the BATCO Research & Development Center.

Q. Well it was the major biological research center for the BAT Group; wasn't it?

A. It was the --

It was the research center for -- for the -- the -- the BATCO, which was a tobacco subsidiary of B.A.T Industries.

Q. Well sir, isn't it a fact that B.A.T Industries had delegated to BATCO the responsibilities for doing research and development for the BAT Group companies?

MS. McGARRY: Objection, beyond the scope of the notice of the deposition. I'll permit Mr. Gilbey to answer this one.

A. I've never heard the expression that "B.A.T Industries delegated." It seems to me to follow that BATCO as the tobacco company would carry out research

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of the lines it does.

Q. Well sir, it's clear, isn't it, that BATCO reports to B.A.T Industries; doesn't it?

A. In the broader sense, yes.

THE REPORTER: We have to change tape. Off the record, please.

(Discussion off the record.)

(Plaintiffs' Exhibit 480 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 480, this is a document that begins with the Bates number 104601156; correct?

A. That's right.

Q. And you've had the opportunity to look at it while we were off the record; right?

A. Well very briefly, yes.

Q. All right. And basically it is an organizational chart of B.A.T Industries P.L.C.; isn't it?

A. Yes.

Q. And we see that by looking at the page that ends with the Bates number 157.

A. Yes.

Q. Right?

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And then if you look at the next page, the page that ends with Bates number 158, it starts with a heading "B.A.T INDUSTRIES P.L.C. - OUTLINE ORGANISATION." Right?

A. Yes, indeed.

Q. And it shows on this page that ends with Bates number 158 the organization for B.A.T Industries as of the time the document was written.

A. Correct.

Q. During this period Patrick Sheehy was chair of the board of B.A.T Industries P.L.C.; right?

A. Yes.

Q. Now there is a line that goes down the center of the document; right?

A. Yes.

Q. And it continues on the next page; doesn't it?

A. Yes.

Q. The organizational chart --

MS. McGARRY: I --

Q. -- for this continues on with the operating groups immediately under the line at the top of the page; right?

MS. McGARRY: I'm going to object to this line of questioning. I think it's beyond the scope of the notice. If we're going to spend a lot of time

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on this, I may have to end up directing the witness not to answer.

A. Yes.

MS. McGARRY: Unless you can explain to me how this relates to document collection and production.

Q. Now, sir, it shows as the first among the operating groups British-American Tobacco Company Limited; doesn't it?

A. That's right.

Q. And that's BATCO; isn't it?

A. That's right.

Q. And that's the research company that we've been talking about in Exhibits 479 and Exhibit 72; right?

A. It's not correct to call it a research company. It's -- it's a tobacco manufacturing and distribution company.

Q. All right. With a Group Research & Development Center at Southampton.

A. That's right.

Q. Okay. And that Group Research & Development Center is G.R. & D.C.

A. Yes. Yes.

Q. And it was the subject of Exhibit 72 regarding sending -- or not sending sensitive materials to

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Brown & Williamson; right?
A. That's right.
MS. McGARRY: I -- I object to the form of the question.
Just give me time to object.
THE WITNESS: (Nodding.)
Q. Now if we go back to Exhibit 479, this is a BATCO document; correct?
A. Yes.
Q. All right. It says that non-contentious materials may be sent, if you look at page two.
MS. McGARRY: Which paragraph are you on?
Is there a question pending?
MS. WIVELL: Yes.
MS. McGARRY: May I hear it again?
THE WITNESS: I missed it.
MS. WIVELL: Oh, I'm sorry.
Q. It says on page two non-contentious material may be sent; right?
A. Paragraph 3.1, "Where information is totally non-contentious, it may be sent."
Q. And if there were any doubts, the reader was to seek clearance from the research manager; right?
A. Yes.
Q. Who might and then -- might then in turn seek

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clearance from Millbank; right?

MS. McGARRY: It says may, not might, if you're reading the document.

A. That's correct. This relates to information for countries other than the U.S.A.

Q. All right. But then for information for the U.S.A. where totally non-contentious, it may be sent to the named B&W recipient; otherwise, it will be directed to Maddox or clearance from Millbank will be sought; right?

A. Correct.

Q. All right. What was Millbank?

A. Millbank is the -- the BATCO chief office.

Q. Sir, if we go back to the interrogatory answers of --

MS. McGARRY: Which one?

MS. WIVELL: I'm sorry, I didn't believe I was through.

MS. McGARRY: I believe it's 474, is the exhibit we will be using.

Q. In one of the interrogatory answers -- I'm sorry. Strike that. On Exhibit 474, on page six, there is a list -- I'm sorry, that's not it.

Ah. I'm sorry. Strike that.

Would you turn to Exhibit 476.

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(Exhibit 476 handed to the witness.)

Q. Would you turn to page 15.

There is a heading entitled "Documents That Were Not Sent To An Intended Recipient." Correct?

A. Correct.

Q. And that concerns a period when not every R&D research report issued by BATCO and distributed to B&W currently exists in B&W's files; right?

MS. McGARRY: Object to the form. You may answer.

A. Well I'd rather read the wording of the paragraph itself.

Q. All right. Why don't you read the introduction to A -- 4.A.

A. "B.A.T Industries is aware, upon information and belief, that not every R&DC report issued by BATCo and distributed to B&W during the years 1980 to 1994 currently exists in B&W's files."

Q. So B.A.T Industries is aware that there are documents which were sent to Brown & Williamson which were not in their files; right?

A. It seems so, yes.

Q. And if you turn to the next page, page 16, there's reference to a period of time -- additional period of time in 1994 and '95 when the BATCO R&DC

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department did not distribute R&D reports to B&W; right?

A. That's right.

Q. And isn't it true that in 1994, Brown & Williamson instructed B.A.T Industries, BATCO and BATUKE that it should not sent reports to it?

A. I don't know that as a fact.

Q. All right. Well you understand that there was a period in 19 -- beginning in 1994, at or around the time this lawsuit was filed, when Brown & Williamson instructed B.A.T Industries, BATCO and BATUKE not to send B&W any reports; correct?

MS. McGARRY: Objection, asked and answer. But go ahead.

A. I don't know that as a fact.

Q. Have you seen a document to that effect during your preparation for the deposition?

A. Sorry. To what effect?

Q. To the effect that written communications with Brown & Williamson beginning in 1994 should be limited.

MS. McGARRY: Objection to the form of the question. You may answer.

A. I don't immediately recall seeing a document.

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for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 481, this is a document Bates numbered 403680929; correct?

A. That's it.

Q. Dated September 15th, 1994.

A. That's right.

Q. This is a BATCO document; isn't it, sir?

A. That's right.

Q. If you --

Did you see this document in preparation for your deposition?

A. Yes, I did actually, yes.

Q. Would you turn to page two. There are a summary of points arising from the TSC meeting;" right?

A. That's right.

Q. The TSC meeting is the Technical Steering Committee; right?

A. That's right.

Q. And this was a meeting that took place in Rio de Janeiro?

A. Apparently, yes.

Q. Various representatives of the BAT Group companies took part in that meeting; correct?

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A. I think that's right.
Q. Point two says, "B&W have instructed Group members not to undertake written communication with them until further notice. Alternative communications vehicles are being considered;" correct?
A. That's right.
Q. And isn't it a fact that the documents which are listed on page 16 and 17 of Exhibit 476 were documents that were not distributed to B&W during that time period?
A. I don't know that as a fact, but it -- it seems to coincide with the time period.
(Discussion off the stenographic record.)
Q. And as a matter of fact, every single one of the scientific reports that's listed in -- on page 16 and 17 of Exhibit 476 are dated either January -- either 1994, '95 or '96; correct?
MS. McGARRY: You're talking about in response to B., not the parts of pages 16 and 17 that are responsive to other paragraphs; is that correct?
MS. WIVELL: Yes.
MS. McGARRY: Thank you.
THE WITNESS: I'm sorry. Can you repeat the question?

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MS. WIVELL: Certainly.

Q. And as a matter of fact, every single one of the scientific reports that's listed under B. on pages 16 and 17 of Exhibit 476 are dated either 1994, 1995 and 1996; correct?

A. So far as they -- any of them are dated, yes.

Q. Is it mere coincidence -- I'm sorry. Strike that.

Is it your testimony that it is mere coincidence that this instruction by B&W not to undertake written communications with them and these documents -- and this -- that are listed here, is it merely coincidence that those dates are the same?

MS. McGARRY: Objection, argumentative. You may answer.

A. No.

Q. Do you believe that the interrogatory answer shows those reports which were not sent to Brown & Williamson pursuant to these instructions listed in Exhibit 481 on page two?

A. Sorry. Can you say again?

Q. Do you believe that the interrogatory answer shows that those reports which were not sent to Brown & Williamson -- I'm sorry, strike that.

Do you believe that the interrogatory answer

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shows those reports which were not sent to Brown & Williamson pursuant to these instructions listed on Exhibit 481, page two?

A. I just don't know whether they are pursuant to those instructions or not.

Q. Well during the preparation for your deposition, did you ask anyone whether these reports were not distributed to Brown & Williamson pursuant to the instructions on page two of Exhibit 481?

A. No, I didn't, no.

Q. Were you curious about it at all?

A. Yes, I suppose the answer is yes.

Q. But you just don't know whether it's a coincidence or whether it was a planned lack of communication as you sit here today; is that right?

A. That's correct.

MS. McGARRY: I beg -- excuse me.

MS. WIVELL: Why don't we take our afternoon break.

MS. McGARRY: No, no. I'm going to object for the record. You're being argumentative and you're being snide.

MS. WIVELL: Take our afternoon break.

THE REPORTER: Off the record, please.

(Recess taken.)

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BY MS. WIVELL:

Q. Sir, isn't it a fact that one of the reasons it was thought it was important to keep sensitive material from Brown & Williamson is because that it was thought if those steps were taken, plaintiffs' attorneys could not show that Brown & Williamson knew about hazards associated with cigarettes?

MS. McGARRY: Objection, asked and answered. This is now the fifth time.

A. I don't know that as a fact.

(Discussion off the stenographic record.)

(Plaintiffs' Exhibit 482 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 482, that is a document Bates numbered 105530759; correct?

A. Yes.

Q. If we turn to the second page of the document, it says, "1 copy for LCFB please." Right?

A. Correct.

Q. That's Lionel Blackman; isn't it?

A. That's right.

Q. And in the mid-'80s he was acting manager of group research and development for BATCO; correct?

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A. I believe that's right, yes.
Q. Then it says under that, "NOTE: Brown & Williamson not," underlined twice, "to be shown on circulation list;" correct?
A. That's what it says, yes.
Q. Now sir, if we go to the page that is Bates numbered ending 764, we see that the subject of this report that was not to be sent to Brown & Williamson was "SIDESTREAM NITROSAMINE DELIVERIES FROM UREA TREATED TOBACCOS;" correct?
A. Yes.
Q. Dated November 13th, 1984.
A. Yes.
Q. And if we look down the distribution list, we see that no Brown & Williamson personnel are listed on the distribution list; correct?
A. I don't know that as a fact. I don't know some of the people on -- on the list there.
Q. All right. Do any of -- any of the names strike you as Brown & Williamson personnel as you sit here?
A. No, they don't, no.
Q. All right. Now you read this document in preparation for your deposition; didn't you, sir?
A. I've certainly seen it in preparation, yes.
Q. All right. And this document confirms that

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urea-treated tobacco increased certain tobacco-specific nitrosamines; correct?

MS. McGARRY: I object, it's beyond the scope of the deposition.

A. I don't know because I don't know the document well enough to know what conclusions it draws.

Q. All right. Well let's turn to the last page of the text entitled "CONCLUSIONS AND RECOMMENDATIONS," the page that ends with Bates number 778. There it states at the beginning of the second complete paragraph, quote, "It was shown in a previous report that volatile nitrosamine levels in mainstream smoke were significantly reduced, but tobacco specific nitrosamine mainstream levels were conversely increased. The overall effect of the urea was to increase total nitrosamine mainstream levels." Correct?

A. That's what it says, yes.

Q. All right. And isn't it a fact that at the time this document was written, Brown & Williamson was utilizing urea to treat its tobacco that went into cigarettes?

MS. McGARRY: I object, it's beyond the scope of the notice. I'll permit the witness to answer if he knows.

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A. I've got no idea.
Q. You just don't know one way or the other --
A. No.
Q. -- as you sit here today.
MS. McGARRY: "No," she's wrong, or "no," you don't know?
THE WITNESS: Sorry. Which question am I answering?
Q. All right. Do you know one way or the other whether, at the time Exhibit 482 was written, whether Brown & Williamson was using urea-treated tobacco in its cigarettes?
A. I don't know.
Q. All right. Now sir, isn't it a fact that lawyers were so concerned about documents relating to the hazards of cigarette smoke getting into the hands of Brown & Williamson during this period that efforts were made to head off research or rewrite research?
MS. McGARRY: Object to the form. Could you define which "this period" is?
MS. WIVELL: All right. Let me go back.
Q. Exhibit 482 is dated 1984; right?
A. That's right.
Q. All right. And that is after the second wave of tobacco smoking-and-health litigation was filed in

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the United States; right?
A. I think that's right, yes.
Q. All right. And that -- I'm sorry. Strike that.
Concern about that second wave of litigation concern -- continued up to and including 1989; didn't it?
A. Concern on whose part?
Q. On behalf of B.A.T Industries, BATCO and BATUKE.
A. I just don't know that as a fact.
Q. Well I think, correct me if I'm wrong, sir, didn't you say earlier that you -- that BATCO stopped going through its documents in 1989 because litigation became less of a concern?
A. That's right, yes.
Q. All right. But during the period from, say, the time the cases were filed in 1983 until 1989, there was a tremendous concern about litigation in the United States concerning smoking and health; right?
MS. McGARRY: Objection.
A. There was an awareness. I don't think I said a concern. There was certainly an awareness that was out there.
Q. And isn't it a fact that as a result of that awareness, that lawyers directed that certain research be rewritten?

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A. I don't think that's the case, no.
Q. Well you are aware that lawyers from the United States at Brown & Williamson were concerned and communicated with lawyers in the U.K. about research that was being done at BATCO.
MS. McGARRY: I'm going to object that it's beyond the scope, and I also don't want to get into privileged information, so I'll let the witness answer "yes" -- "yes" or "no" at this time.
A. Can you repeat the question, please?
Q. Certainly.
You are aware that lawyers from the United States at Brown & Williamson were concerned and communicated with lawyers in the U.K. about research that was being done at BATCO.
A. I'm not -- I'm not sure I --
I'm not sure if I was aware or not. I think the answer must be no, I'm not sure what was said or done.
(Plaintiffs' Exhibit 483 was marked for identification.)
BY MS. WIVELL:
Q. Sir, showing you what's been marked as Exhibit 483, this is a document Bates numbered 300517017; correct?

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A. Correct.
Q. And it is a document that came out of the files of BATCO.
A. I believe so, yes.
Q. It's from Kendrick Wells, who is a lawyer at Brown & Williamson?
A. He is, yes.
Q. To Anne Johnson, who is a lawyer for British-American Tobacco Company Limited?
A. Yes, that's right.
Q. And Mr. Wells encloses some INTERBAT citations; doesn't he?
A. I -- I don't know whether these papers came from INTERBAT. I'm looking at the -- the documents with the note.
Q. All right. The note says, "When you return to the office, I would appreciate it if you would call me to chat about them." I'm sorry, strike that.
The letter says, "I am enclosing materials.
"When you return to the office, I would appreciate it if you would call me to chat about them." Correct?
A. Yes.
Q. And the materials that are enclosed all refer to research that was ongoing at BATCO at the time this

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document was written, September 25th, 1986; right?
A. I don't know without going through the document more carefully than I have.
Q. All right. Well you saw this document in preparation for your deposition today; didn't you, sir?
A. Yes.
MS. McGARRY: Okay, let's --
Give me time to object to the question. Ms. Wivell is speaking quickly and you're responding quickly.
Q. Now --
Now, sir, you understand based on that review that the research that's described in this document was ongoing at BATCO at the time this document, Exhibit 483, was written.
MS. McGARRY: Objection, the witness just said he didn't know.
A. I -- I didn't know there was ongoing research at the time, no.
Q. All right. Well it is all smoking-and-health-related research; isn't it, sir?
A. As I say, I -- unless I went through the document more carefully than I have, I -- I couldn't confirm that.

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Q. Okay. Well let's take a look at the page that ends with Bates number 021. That was research entitled "Investigation of the Effects of Nicotine Enhancement on Human Smoking Behaviour;" right?
A. Yes.
Q. And the objective was to assess the changes, if any, occurring in human smoking behavior as a result of cigarettes with enhanced levels of nicotine; right?
A. That's what it says, yes.
Q. That -- that research was never completed; was it, sir?
MS. McGARRY: Objection, beyond the scope. I'll permit the witness to answer "yes" or "no," if he knows.
A. I don't know.
Q. All right. Sir, the next particular thing that Mr. Wells wanted to chat about was mutagenicity studies, listed on the page that ends with Bates number 022; correct?
A. That's what it says, yes.
Q. All right. And the objective of that was to determine those parameters which affect mutagenicity of smoke condensate; correct?
A. Yes.

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MS. McGARRY: Objection. You've only read part of it.

Q. That's --

I've read it correctly so far; haven't I, sir?

A. So far, yes.

Q. All right. That research was never done; was it, sir?

A. I don't know.

Q. Did you inquire, while you were preparing for your deposition, whether this research was undertaken, was completed?

A. No, I didn't, no.

Q. Okay. Let's turn to the page on -- that ends with Bates number 024. There at the top it talks about selenium and smoke condensate mutagenicity.

By the way, what do you understand the word "mutagenicity" to mean?

MS. McGARRY: Objection, beyond the scope of the deposition.

A. I really don't know.

Q. You're a lawyer, sir; aren't you?

A. Yes, I am, yes.

Q. Okay. And you don't know what "mutagenicity" means?

MS. McGARRY: Objection, argumentative. I

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direct the witness not to answer. The question has been asked and answered. Every time you get an answer you don't want, you just ask it over and over again, and that's abuse of the process.

Q. Goes on to say, "Selenium as sodium selenate -- selenite has been shown to be a -- an effective inhibitor of the mutagenic activity of several chemicals," and it goes on to list those; right?

A. Yes.

Q. All right. Do you know if that research was ever done?

A. No, I don't.

Q. Could you go on to the next page that -- or the page that ends with Bates number 025. There is some reference to a project entitled "Biochemical Effects of Tobacco Smoke Exposure in Experimental Animals;" right?

A. Right.

Q. And the status of that is, it says, "Cigarette smoke is known to contain oxidants which could affect the level of endogenous protective mechanisms in the lung;" right?

A. It says that, yes.

MS. McGARRY: It says "affect levels," not "the level."

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MS. WIVELL: Thank you.
Q. Do you know if that work was ever completed?
A. No, I don't.
MS. McGARRY: Objection, it's beyond the scope.
Please give me time to object, Mr. Gilbey.
A. I don't know, no.
Q. Okay. Can you turn to the page that ends with Bates number 028. Another one of the subjects that Mr. Wells was interested in chatting with Ms. Johnson about was -- had the objective "To investigate and develop cigarette design concepts which will allow the levels of components in mainstream and sidestream smoke to be manipulated and controlled;" correct?
MS. McGARRY: Object to the form.
A. That's what it says, yes.
Q. All right. Do you know if that work was ever done?
MS. McGARRY: Objection.
A. No, I don't.
Q. Okay. Well sir, isn't it true that documents concerning work that had been completed at BATCO Group Research & Development Center were rewritten in order to try and sanitize them?
MS. McGARRY: Objection, asked and

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answered.

A. Not that I'm aware of, no.

MS. McGARRY: This is just part of the document. Do you want to mark the whole document?

MS. WIVELL: If you've got the whole document, I'll be happy to mark it.

MS. McGARRY: Okay. Make sure it's clean.

MS. WIVELL: Well for the record, are you looking at 105664005?

MS. McGARRY: Yes.

MS. WIVELL: Okay. Then I have copies.

MS. McGARRY: Okay. Great.

MS. WIVELL: And you're representing to me that these are all one document; is that right?

MS. McGARRY: Well I believe the first page goes with the rest. I don't know whether they're paperclipped together or stapled together.

MS. WIVELL: All right. But it's your understanding that Exhibit -- the -- what we have marked already as Exhibit 484 and the document that begins 105664005 go together.

MS. McGARRY: Yes.

MS. WIVELL: Mr. Gilbey, is it your understanding that they go together?

THE WITNESS: I think so.

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MS. McGARRY: He doesn't have them in front of him yet; does he?

THE REPORTER: No.

THE REPORTER: Do you want them stapled?

MS. WIVELL: Yeah.

MS. McGARRY: Do you want it one exhibit or two?

MS. WIVELL: We'll make it one.

(Plaintiffs' Exhibit 484 was marked for identification.)

BY MS. WIVELL:

Q. Sir, you now have before you what has been marked as Exhibit 484; correct?

A. Correct.

Q. And these are documents that you saw in your preparation for this deposition.

A. That's right.

Q. All right. And for the record, since there is some confusion, the first page of Exhibit 484 is Bates numbered 105664004; right?

A. That's it.

Q. And the second page ends with Bates number 005; right?

A. Correct.

Q. And the document goes up to Bates number 035.

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A. Correct.
Q. And it's your understanding these documents all go together; right?
A. I think they do, yes.
Q. All right. Isn't it a fact that this document was rewritten in order to sanitize it?
A. No.
Q. Well, the first page of this document says, "Note change of file," then "Please can you have typed two master pages of the distribution list -- page as follows." Did I read it correctly so far?
A. Yes.
MS. McGARRY: Actually it said "Note change of file number," not "Note change of file."
MS. WIVELL: All right. Let me start again.
Q. Sir, it says, "Note change of file number," then, "Please can you have typed two master pages of the distribution page as follows." Did I read it correctly so far?
A. Yes.
Q. Then it says, "Showing Title, Author, Issuer," and then it says, paren, "(NB - FH, not CIA), and nothing else (except date of course)." Right?
A. Yes.

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Q. All right. Isn't it a fact that this document originally was issued under the name of Cora Ayers?
A. I don't know that as a fact.
Q. And isn't it a fact that this document was originally initially issued under a different file number?
A. I don't know that as a fact either.
Q. For the record, this document is titled "BATFLAKE MK. II IN FLUE-CURED BLENDS, SMOKE CHEMISTRY, LABORATORY REPORT L.496 RESTRICTED." Correct?
A. Correct.
Q. And isn't it a fact, sir, that this document was initially sent out as laboratory report L.479-R and showed Cora Ayers as the person issuing the document?
A. I don't know that at all.
Q. And isn't it a fact, sir, that Exhibit 484 at page 007 contains a distribution list?
A. There's a distribution there -- list there, yes.
Q. Yes. And none of the people that are listed there at the time were Brown & Williamson employees; were they?
A. I don't know, because I don't know some of the names.
Q. All right. Sir, isn't it a fact that the report

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was initially issued by Cora Ayers and showed a distribution list that included Brown & Williamson employees Dr. R. A. Sanford and Dr. -- and R. S. Wade?

A. I don't know that.

(Plaintiffs' Exhibit 485 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 485, this is a document bearing the Bates number 105664350; correct?

A. Correct.

Q. And it's entitled "EXAMINATION OF CIGARETTES CONTAINING FOAMED BATFLAKE - PROGRESS REPORT, LABORATORY REPORT NO. L.479-R," dated March 14th, 1975; correct?

A. Correct.

Q. Sir, isn't it a fact that these two reports are the same report, but that Exhibit 484 was rewritten pursuant to the instruction on this page which included deletion of any reference to Brown & Williamson personnel receiving the document?

A. I'd have to go through the two sets of pages to see if they're the same report. I think the second part of your question was about rewriting it. I

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don't know that.
Q. All right. You just don't know as you sit here today; right?
A. That's right.
Q. But sir, you understand that there were documents that were issued to Brown & Williamson and then recalled; correct?
A. I don't know if I've said I understand that at all, no.
Q. All right. Well do you understand that there were documents that were sent by BATCO to Brown & Williamson that were then recalled?
A. I don't think I know that, no.
MS. WIVELL: Mr. Stirewalt, could you get out Exhibit 65.
(Exhibit 65 handed to the witness.)
BY MS. WIVELL:
Q. Sir, showing you what's previously been marked as Plaintiffs' Exhibit 65, this is a document that is Bates numbered 105653423; correct?
A. Sorry, I missed that. Can you repeat that?
Q. Bates numbered 105653423; right?
A. That's correct.
Q. And if you turn to the second page of the document, it says, "All the Copies have been recalled

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back to G.R. & D.C. and Destroyed by Dr. D. G. Felton." Correct?
A. Correct.
Q. And the subject of this was "INTERACTION OF SMOKE AND THE SMOKER, PART 6: EEG STUDIES;" correct?
A. That's what it says, yes.
Q. All right. And do you understand that this document was recalled and that all copies except for one were destroyed?
A. Yes, I do. Yes.
Q. All right. Now this document was edited and then reissued some years later; wasn't it?
A. I believe that's the case, because it had some incorrect dates in it, yes.
Q. But we know for a fact that it was claimed back from Brown & Williamson and the copies destroyed; right?
A. I didn't know that as a fact.
Q. Okay. Isn't it a fact, sir, that other reports were sent to Brown & Williamson and then brought back to BATCO where they were destroyed?
A. I don't know of any other instances, no.
(Discussion off the stenographic record.)
(Plaintiffs' Exhibit 486 was marked for identification.)

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BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 486, this is a document you saw during your deposition preparation; didn't you, sir?

A. I believe so, yes.

Q. And it concerns report number RD.1376 Restricted; right?

A. Yes.

Q. And it's from S. R. Evelyn?

A. Yes.

Q. Mr. Evelyn was a consultant -- I'm sorry.

Mr. Evelyn was an employee of the Group Research & Development Center; wasn't he?

A. I think that's right, yes.

Q. And according to this document, "Enclosed are copies -- copy numbers 2-13 inclusive of the above report. These should be destroyed and your file -- your records amended accordingly." Correct?

A. Yes, says "Those copies should be destroyed," yes.

Q. And it says, "Copies 14, 15 and 16 will not be destroyed and will be available for reference purposes within the Centre only;" correct?

A. Yes.

Q. All right. And it says, "By copy of this

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memorandum I am asking Dr. Lewis to ensure that the record of INTERBAT is also deleted and I am also advising Mr. Hughes of the position;" correct?

A. That's what it says.

Q. Had Mr. Hughes by this time become president of Brown & Williamson?

A. I don't know Mr. Hughes.

Q. Do you know if the document was destroyed and the record on INTERBAT was deleted?

MS. McGARRY: Objection, compound. You may answer.

Q. All right. Let me rephrase the question.

Do you know if document 1376 was destroyed?

A. I believe document 1376 was produced to -- to plaintiffs. Whether some copies of it were destroyed, I don't know.

Q. All right. Do you know if the record on INTERBAT was deleted?

A. I believe that the record is still existing.

Q. All right. Was this document transferred somewhere?

A. I have no idea.

Q. All right. So to the best of your knowledge, the actions that are referenced in this document never took place; is that right?

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MS. McGARRY: Objection, mischaracterizes prior testimony. You may answer.

A. I -- I don't think I said that. I think I said that a copy of the report was produced to plaintiffs, and I also said I didn't know whether other copies of it were destroyed.

Q. Was the copy of 1376 produced by Brown & Williamson?

A. I don't know that.

Q. You understand it was produced by BATCO.

A. That's right.

Q. Sir, isn't it a fact that B.A.T Industries, BATCO and BATUKE were concerned about company documents being produced in American litigation which might disadvantage BAT Group companies?

A. Yes.

Q. And as a matter of fact, the defendants developed a document-retention policy specifically with American legal litigation in mind; didn't it?

A. No.

Q. Well sir, you've seen the document entitled "RECORDS MANAGEMENT PROGRAMME, TRAINING WORKSHOP, BLANTYRE, MALAWI," as part of your preparation for this deposition; right?

A. I have, yes.

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Q. All right. Now Malawi is an African country; right?
A. Correct.
Q. And isn't it a fact that BATCO sent a person to talk about document collection and -- and retention to its various companies, including Malawi, the one in Malawi?
A. Yes, it did. Yes, someone went to Malawi, yes.
Q. All right. And isn't it a fact that this occurred in approximately 1993?
A. I think the document-retention policy was started around 1992. That -- that may have occurred in '93, yes.
Q. All right. And isn't it a fact that examples of documents which were produced by Brown & Williamson and used against cigarette companies in smoking-and-health litigation in the United States were used as part of the training for that document-retention program when it was put in place?
A. I think that was a part of it. I think if you are suggesting that was the -- the main driver for the policy, that's wrong.
Q. But it was a part of it; wasn't it, sir?
A. It was part of the greater scheme, yes.
(Plaintiffs' Exhibit 487 was marked

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for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 487, this is the program for the training workshop on the records management program that we've just been discussing; isn't it?

A. That's right.

Q. It's Bates number 402156730; right?

A. Yes.

Q. And among the things that is discussed in this workshop -- I -- I'm sorry, let me step back a second.

This workshop in Malawi was similar to one that was performed at all BAT Group companies; wasn't it?

A. I think that's right, yes.

Q. All right. And so just because it's Malawi doesn't mean that what's being said here is at all unusual; is it?

A. I think we could assume that.

Q. All right. Sir, would you turn to the page that ends with Bates number 765. Do you see it?

A. Yes, indeed.

Q. It says there, "LEGAL BENEFITS." Right?

A. Yes.

Q. That refers to legal benefits of a document-

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retention or -management program; doesn't it?
A. I think that's right, yes.
Q. All right. And you remember that from your review of this document in preparation for your deposition.
A. I remember seeing that part, yes.
Q. Okay. And under "LEGAL BENEFITS" it says "OPPOSING PARTY IN LAWSUIT OBTAINS DOCUMENTS THROUGH 'DISCOVERY' PROCESS," right?
A. Yes.
Q. All right. It talks about the fact that the United States has liberal discovery.
A. Yes.
Q. And it talks about the fact that document discovery is part of many legal systems; right?
A. Yes.
Q. And in fact it refers to torture by document requests; doesn't it?
A. It does.
Q. Okay. Now you understand that as part of this presentation that was given at B.A.T. Company -- I'm sorry. Strike that.
You understand that as part of this presentation that was given at BAT Group companies throughout the world, examples of documents which were produced in

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American smoking-and-health litigation were given; right?

MS. McGARRY: Object to the form.

A. I -- I don't know for sure. I -- I think they were. This is, of course, a document-retention policy, but I think that's correct.

Q. All right. But one of the reasons that's stressed in this document-retention policy is that action should be taken to avoid unnecessary documents; right?

A. I'm not sure the --

I'm not sure this actually says that.

Q. All right. Well could you look at the page that ends with Bates number 734.

A. Yes.

Q. It says there under the second bullet point, "AVOID UNNECESSARY DOCUMENTS;" right?

A. Yes.

Q. And it goes on to say, "ESPECIALLY THOSE DEALING WITH SENSITIVE SUBJECTS."

A. Yes.

Q. And you would agree that B.A.T Industries, BATCO and BATUKE were concerned about the creation of documents dealing with sensitive subjects; right?

A. I think we've said before that there is a -- a

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sensitivity or a concern, whatever it was, an awareness of what was going on. And this policy was not entirely linked with that. This policy was first and foremost a management policy to get control of a huge number of business documents generated for many purposes.

Q. But just so we're clear here, we're talking about the presentation which begins on page 733 and a statement which appears under the first major heading on the very next page; right?

A. Can you say that again? I'm sorry.

Q. Okay. The presentation begins on page 733; correct?

A. Yes.

Q. Okay. And the statement about the sensitive subjects and avoiding unnecessary documents appears on the very next page at the top; right?

A. It does.

Q. It does.

And just so we're clear here, American litigation and document production was of concern to B.A.T Industries, BATCO and BATUKE and resulted in this policy being put in place, didn't it, sir?

MS. McGARRY: Objection, mischaracterizes the prior testimony.

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A. I think your question was in two parts. I think you said it was a concern, and I think we've covered that before; it was certainly in mind at this period of time. I think the second part you said resulted in this policy. It is incorrect to say that was the driving force for this policy.

Q. It was one of the purposes behind this policy being put into place; wasn't it, sir?

A. It was a subsidiary purpose.

(Plaintiffs' Exhibit 488 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 488, this document is part of the overheads that were used to illustrate the presentation which was given in 487; correct?

A. I think that's correct, yes. I'm not sure.

Q. All right. And as a matter of fact, we know that the writer -- I'm sorry, the person who gave the presentation on the records management program used overheads; right?

A. I didn't know that for a fact, but it seems reasonable, yes.

Q. All right. Well we know from -- I'm sorry. Strike that.

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The first of the pages that encompasses Exhibit 488 is entitled "B&W DOCUMENTS PRODUCED IN LIGGETT CASE;" right?

A. Yes.

Q. Now if we go on, there is reference to "PASSAGES FROM THE CIPOLLONE DOCUMENTS;" right?

A. Of H5, yes, that's right.

Q. All right. And that's the page that ends Bates number 796; right?

A. Yes, that's correct.

Q. Now this page quotes from Brown & Williamson documents; right?

A. I wasn't aware that was the case.

Q. All right. They -- but they have quotes -- I'm sorry.

But this overhead does utilize quotes of documents that were used in the Cipollone smoking-and-health case in the United States; right?

A. That's --

It seems to, yes.

Q. All right. Now would you turn to the -- the last page of the document. There is reference to a "March 3rd, 1976, memorandum from V. C. Broach, Group Manager, regarding proposal for marketing Viceroy cigarettes, as reported in 1981 FTC Staff Report on

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the Cigarette Advertising Investigations (Confidential Version);" right?

A. Yes.

Q. And you understand that Carter Broach was the brand manager for Viceroy cigarettes at Brown & Williamson?

A. I didn't know that before now.

Q. Okay. But you understand that Viceroy cigarettes were Brown & Williamson's cigarettes; correct?

A. Correct.

Q. All right. And this particular overhead utilizes the following quote, doesn't it, sir, quote, "In your ads create a situation taken from the day-to-day life of the young smoker but in an elegant manner have this situation touch on the basic symbols of the growing-up, maturity process;" correct?

A. That's what it says.

Q. All right. And then at the top it says, "Thus, an attempt to reach young smokers, starters, should be based on -- should be based, among others, on the following major parameters;" doesn't it, sir?

A. Yes.

Q. All right. And you understand that this particular overhead was used as part of the records

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management program training workshop at BAT Group companies throughout the world; right?

A. I think that's the case, yes.

Q. All right. Do you understand that's a -- that is taken from a Brown & Williamson document?

A. Sorry. Which page?

Q. That last overhead, was that made from a Brown & Williamson document?

A. I thought we'd agreed it seemed to be quoting from this Broach memorandum, and you just explained to me he was the manager for Viceroy, so --

MS. McGARRY: Don't speculate if you don't know. If you know, you can answer.

A. I don't know more than we discussed.

Q. Do you know why this document wasn't produced to the plaintiffs in this case, the document that's referred to in this overhead?

A. By who?

Q. By anyone. Brown & Williamson, BATCO, BATUKE, B.A.T Industries.

A. Well I think it was produced by BATCO; otherwise, it wouldn't be here.

Q. Oh, I'm sorry. Let me make this clear.

The memo that's quoted in this overhead that ends with page 797, this March 3rd, 1976 memorandum,

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can you explain why it was not produced to the plaintiffs in this particular case?

A. By?

Q. Brown & Williamson, BATCO, B.A.T Industries or BATUKE.

A. I can't speak for Brown & Williamson. The only explanation why it wasn't produced by BATCO, BATUKE or B.A.T Industries is we didn't have it.

Q. All right. Well, would it be fair to say that you had it at some time so that this overhead could be made?

A. Not necessarily. I just don't know.

Q. Do you have any idea where the information contained in this overhead came from?

A. No, I don't.

Q. Sir, we had looked at a little bit earlier the organizational chart for B.A.T Industries. Can you find that document. I believe it's Exhibit 480.

(Exhibit 480 handed to the witness.)

A. I've got it.

Q. Could you turn to the page that ends with Bates number 158.

A. Yes.

Q. Were all of the files of the people listed on this page reviewed for responsive documents as part

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of the collection of documents in this case?
A. The only answer I can give is if they existed at the time we took all the files from B.A.T Industries, if they existed then, they would have been brought into the -- the process.
Q. All right. Did you speak at the time with Sir Patrick Sheehy to determine whether he had any documents that were responsive to plaintiffs' requests?
A. I didn't speak to -- to Patrick, but I'm certain that at the time when we started this collection for Windsor House that his files were taken as part of the -- of the overall search and would have been put through the process and put in our depository.
Q. All right. Going on to the next page -- I'm sorry.
Would you go on to the page that ends 160. That talks about group headquarters finance, accounting, audit, taxation and treasury. Were the files of the individuals or the departments that are listed on this page reviewed for responsive documents?
A. I think they would have been. I've just got a slight hesitation about treasury. I think at one time they --
They were certainly reviewed, but I think the --

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the majority of them were deemed to be non-responsive. I think that's the case. But they were reviewed, and there's probably the files, some of them, in the depository.

Q. All right. Would you turn to the next page that ends with Bates number 161. Were the files of the various individuals and departments that are listed on this page reviewed for responsive documents?

A. They would certainly have been subject to the same process we discussed earlier on today. Lists would have been taken and -- and designations and determinations made about whether they were to do with the issues we were concerned with, yes.

Q. Now the next page, if you look at it, concerns group headquarters legal and secretarial. Were the B.A.T Industries legal department files reviewed for responsive documents?

A. Most certainly.

Q. All of them?

A. To the best of my knowledge, yes.

Q. All right. Turning to the next page, there is a heading for group headquarters, public affairs. Were all of the departments that are listed there searched for responsive documents?

A. I believe so.

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Q. Now the next page concerns British-American Tobacco Company Limited. Were the files of the individuals listed there searched for responsive documents?

A. So far as they existed, yes, every file was -- that was in the BATCO's possession was -- was put through the determinations we've -- we've discussed.

Q. All right. The next page concerns B.A.T. U.S. Inc. That company was in existence -- was in existence at the time; wasn't -- the document requests were made; right?

A. I think that's right, yes.

Q. All right. Were the files of B.A.T. U.S. Inc. searched for responsiveness?

A. No.

Q. All right.

MS. McGARRY: By BATCO and B.A.T Industries, I assume you're asking.

MS. WIVELL: Yes.

Q. Would you turn to the next page. There is an organizational chart for BATIC in Germany; is that right?

A. That's right, yes.

Q. All right. Were the files of that organization searched for responsive documents?

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A. No. Because as with BATUS, we weren't obliged to search.
Q. I'm sorry, I don't understand your answer. Did you say, "No, because as with B.A.T. which can, we weren't obliged to search?"
A. I said, "No, as with BATUS," --
Q. Okay.
A. -- "we weren't obliged to search."
Q. I knew I didn't hear it right.
Would you go through the rest of the documents, sir, and determine if there are any other companies whose files were searched for responsive documents?
A. Many of the pages there relate to BATCO, which, as we've discussed, were most certainly thoroughly searched.
Q. All right. But apart from the pages that relate to BATCO, were the other companies searched for responsive documents?
A. No, because we weren't obliged to under the orders.
Q. All right. Sir, there is a page here concerning Eagle Star; correct?
A. I saw that somewhere, yes.
Q. Now did you understand that Eagle Star's databases had been utilized to do a statistical

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analysis of smoking?
A. I didn't know that, no.
Q. Well, were the documents concerning the statistical analysis utilizing Eagle Star's database produced to plaintiffs in this litigation?
MS. McGARRY: I need to see that question again, read it.
Okay, you may answer.
A. Can you read it again for me, please?
Q. Certainly.
Were the documents concerning the statistical analysis which was done utilizing Eagle Star's database produced to plaintiffs in this litigation?
A. I believe they would have been if they were in the files of B.A.T Industries, BATCO or BATUKE.
(Plaintiffs' Exhibit 489 was marked for identification.)
BY MS. WIVELL:
Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 489, this is a document entitled "STRICTLY PRIVATE AND CONFIDENTIAL, BAT SERVICES LIMITED, JOB TITLE: MANAGER, SMOKING ISSUES, GROUP RESEARCH & DEVELOPMENT CENTRE," dated May 1984; right?
A. Right.

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Q. It --

The Bates number is 109670273.

A. Correct.

Q. Would you turn to page 278.

A. Yes.

Q. All right, sir. This document, which concerns the manager of smoking-and-health research issues, refers to -- on page 278 there's a "Relationships" section; correct?

A. Yes.

Q. And it says there, quote, "It is vital that there is close liaison with Legal and Public Affairs departments in Millbank and to a lesser extent Marketing Department and the product Development Committee," close quote; correct?

A. Yes.

Q. And then the next paragraph under that says, "All associated companies may call on his expertise but his primary contacts are with the USA, Canada, Australia and Germany;" right?

A. Yes.

Q. And it says, "Such work may involve visiting the countries concerned." Right?

A. Correct.

Q. Then it goes on to say, "Most recently a

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collaboration has evolved with Eagle Star on statistical analysis."

A. That's what it says, yes.

Q. Right?

Were all the documents concerning that statistical analysis done with Eagle Star produced to the plaintiffs?

MS. McGARRY: Objection, asked and answered.

A. So long as they were in the files of -- of BATCO's, particularly, because this is a BATCO document, this is a job specification, they would have been produced.

Q. All right. Sir, my question is not whether they would have been, but were they produced?

A. I can't answer that "yes" or "no" because I don't know individual documents --

Q. All right.

A. -- because it was a file-by-file production.

MS. WIVELL: Can we take a break and you talk to the counsel you have with to see if you can answer that question?

THE WITNESS: We can try, sure.

MS. WIVELL: Okay. Thank you. This will be brief.

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THE REPORTER: Off the record, please.

(Recess taken.)

BY MS. WIVELL:

Q. Sir, while we were off the record, did you find out the answer to the question about whether documents relating to the statistical analysis done by Eagle Star were all produced to plaintiffs?

MS. McGARRY: Object to the form of the question.

A. Counsel reminded me that we've had some previous correspondence on -- on this subject with -- with plaintiffs, and that we directed plaintiffs to a considerable number of files which were likely to contain the information around this topic, and indeed that we further directed plaintiffs to a -- a specific report which we think is the -- the work -- the product of -- of -- of this particular subject of analysis and Eagle Star.

Q. I understand that, sir, but I'm not sure you've answered my question. Have all of the documents relating to the statistical analysis done with Eagle Star been produced to the plaintiffs?

A. I can't be categorical about all the documents. I mean I -- I've given the answer as to what we've been able to find out in a break that, you know, this

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topic has occurred before, and really, I can't go beyond that.

Q. Now sir, from time to time in this deposition I think we've referred to computer -- computers; correct?

A. Yes. Mentioned.

Q. Okay.

A. Yes.

Q. Now it's --

Isn't it true that B.A.T Industries, BATCO and BATUKE have computer models for predicting cigarette properties?

A. I don't know that.

Q. (Coughing.) Pardon me.

MS. McGARRY: Want some water?

(Plaintiffs' Exhibit 490 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 490, this is a document Bates numbered 107463454; correct?

A. Correct.

Q. Would you turn to the page that ends with Bates number 515.

A. Yes, I've got it.

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Q. All right.

MS. McGARRY: Let me just note something for the record. This document, the copy we're marking as an exhibit, is on confidential paper, but we sent a letter to your firm early this week withdrawing the confidentiality designation, so there's no need for the discussion of this document to be sealed.

MS. WIVELL: Thank you.

Q. Sir, there do you see on page 515 reference to "Computer models for predicting cigarette density and pressure drop from properties of blend components will be updated to include the latest results..." and so forth?

A. Yes, I see that, yes.

Q. Now do you know whether -- I'm sorry, strike that.

Were documents concerning the computer models that were used by B.A.T Industries, BATCO or BATUKE produced to plaintiffs in this litigation?

A. I -- I can't know specifically about individual models or whatever. We've covered previously that, as far as we were concerned, information -- electronic media was included within our -- our scope, yes.

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Q. Well I guess I'm trying to understand a little bit better. This reference is computer models, and you don't dispute that such models exist; right?
A. I can only go by what it says here.
Q. All right. If you'd turn to page 524, under the list of 1982/'83 conferences, there's even a conference on computer modeling; right?
A. Yes. Yes.
Q. Okay. And what I'm trying to understand, and this goes somewhat to the Category II documents or the -- the collection and production of Category II documents, were the computer models that were used when the scientists ran models for various kinds of cigarettes produced to the plaintiffs?
A. Yeah. My difficulty in answering "yes" or "no" to the -- to the question goes back to the nature of our production, which was file by file, not document by document. So that's why I sometimes had to say that I can't be specific about particular documents in the broad sense, because we -- we didn't produce on a document-by-document basis. So I -- I -- I don't know specifically about this -- this issue of computer models. I can only say that I believe, if they existed, they would have been swept up and produced.

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Q. Well let me ask you this, because you have been designated to talk about the collection and production of Category II documents, correct?
A. That's correct, yes.
Q. All right. Well let me ask you some questions about that collection.
Who had access to do the collection?
A. The -- the -- the same team that did the -- the wide collection for the whole production.
Q. All right. From whom were the Category II documents collected?
A. They were --
They were collected in exactly the same way as -- as the rest of our production, by taking a sweep of all the files from the particular areas. And there was a -- I think I touched on it earlier, much earlier on, that there was a specific task of identifying potentially confidential/trade secret documents as part of the whole process.
Q. All right. Well Mr. Gilbey, could you, because we are very concerned about whether computer models of the kind that are referred to here on page 515 of Exhibit 490, whether or not they were actually produced, could you find that out and just make a report at the end of this deposition in writing about

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whether or not they were produced?

A. I can certainly try. But as I say, and --

Unless for some reason they were specifically listed -- a privilege or confidential, trade-secret listing, the -- the difficulty we have is -- is just that we produced it on a file basis. But we can -- we can certainly try.

Q. All right. Because we are -- are -- would like to know whether the models were produced.

A. I understand.

Q. (Coughing.) Pardon me.

And if you would agree to do that, that would be very helpful.

A. Yeah, within the parameters as I said, of course we will.

Q. Thank you. Now concerning --

Getting back to the Category II documents, were computers used to do the search for Category II documents?

A. I believe partly, yes, there was a search of -- of the database.

Q. Which database was searched?

A. The -- the Rev A, Rev B database.

Q. Now are Rev A and Rev B the databases that were produced to plaintiffs, the solicitors index?

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A. I believe that's right, yes.
Q. Were any other computer databases used to -- to search for Category II documents?
A. I don't think so. I mean I -- I may be wrong, but I think fundamentally there was a -- a search from those databases, and in conjunction with a search, a physical search of the files being reviewed, I think that's correct.
Q. When documents -- (coughing) Pardon me.
A. Sorry. Can I change my answer? I just --
Q. Certainly.
A. No, I've actually missed out a stage, an important stage.
Q. Go ahead.
A. Because -- because of the sensitivity of the confidential and trade secret, after the initial reviews there was a further process dealing with trade secret where one of us -- one or two of our scientific advisors were asked to look through some potentially -- some files that might potentially be in -- in that category and designate where they think we ought to be looking. So we took some assistance from -- from scientists and from other people within the organizations.
Q. When you say "our scientific advisors," who are

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you referring to?

A. Some of the scientists from Southampton.

Q. Who?

A. There was Chris Jenkins, primarily; Robyn Crellin; Richard Baker, I believe, helped.

Q. Anyone else?

A. Very likely, but I think those were certainly the three most involved.

Q. How about a Mr. Heard or Mr. Thornton?

A. No, they -- they weren't involved in that stage.

Q. All right. Were documents produced as part of Category II from selected fields of already-existing computer databases?

A. Sorry, I'm not sure of the question. Will you say it again.

Q. All right. Well let me kind of rephrase it. I'm asking whether documents were produced to the plaintiffs which had certain but not all of the fields of already-existing computerized databases.

MS. McGARRY: Objection to form. I don't understand your question.

A. No, I'm -- no, I'm not -- I'm not understanding this line, so --

Q. Okay.

A. -- please restate it.

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Q. Are you a computer buff, sir?
A. Certainly not.
Q. Certainly not. Okay.
Do you understand that in some computer databases you can print out, select -- if you've got 10 fields, print out a printout that has three or four of those fields?
A. Oh, yes, yes.
Q. Okay. Was that done for any of the Category II documents that were produced by B.A.T Industries, BATCO or BATUKE in this case?
A. No, I don't -- I don't think that was the way we did this I'm talking about.
Q. All right. So if documents printed out computer databases, the full fields were -- were printed for the plaintiffs?
A. Well --
MS. McGARRY: Of the Category II documents.
MS. WIVELL: Yes.
A. We would --
I'm not sure I'm -- I'm with this at all. What we were -- what we were doing was trying to identify files which might contain trade-secret documents. We then asked the scientists -- or the non-scientific

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type of issues, other people -- to -- to identify those documents which would be trade secret. So there was probably less reliance on databases than you perhaps were assuming.

Q. All right. But for -- let me start again.

Were there Category II documents that were printed out of computer databases?

A. No, not printed out of databases, no.

Q. All right. When the Category II documents were assembled for Bates number placement and production, how were they assembled?

A. They were assembled by purely extracting the documents which were deemed to be Category II, removing those from the files that we were producing into Guildford, and separating them for separate inspection.

Q. Were they produced and be -- by "they" I'm referring to the Category II documents. Were they produced all in one set, or were they scattered throughout the production to the plaintiffs?

A. They were -- the --

The production of those Category II, I think, were staggered as the -- because the whole -- because the whole process was, of course, staggered.

Q. How do BATCO scientists access historical data

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on cigarettes that had been produced in the past?

MS. McGARRY: Objection, overbroad, vague.

A. We -- I'm not sure what you're getting at in terms of the --

Are we talking about the formulas or other information concerning them?

Q. The formulas.

A. Simple answer is I don't know.

Q. Where did --

For the Category II production, where did the people producing the documents look to find these formulas?

A. Because the first step we -- we looked on Rev A for files that would potentially have such information in them, and we then invited the scientists to look through those files to see if indeed there was such material in there, and they would then extract it. So it was a fairly painstaking process.

Q. Is there one place where all of the formula documents for cigarettes are kept?

A. No, no.

Q. How do production people access formula and process information for quality control?

A. I don't know.

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Q. Did B.A.T Industries, BATCO or BATUKE take part in any additive disclosure for the U.S. Department of Health and Human Services?

A. I don't know the answer to that.

Q. Did B.A.T Industries, BATCO or BATUKE search their third-party flavor houses for documents to be produced in this litigation?

A. Can you explain what you mean by "third-party flavor houses?"

Q. Okay. Someone who is not a defendant in this case, but who provides flavorings for cigarettes to any one of the three defendants.

A. We wouldn't have searched those houses, no. They --

We had no right to do so.

Q. All right. So the answer is they were not searched; right?

A. That's right.

Q. My next questions are going to relate to not only Category II, but also to the regular document production.

When a responsive document was found and there were other documents with it, like enclosures, what was done with that document?

A. I think we have to go back to -- to the ground

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we've dealt with before, whereby it's difficult for me to talk in terms of documents being found because we were dealing with -- with files. So any file that -- that contained anything that was potentially responsive was kept together. So we could have had a file containing a hundred, 200 sheets of paper; so long as it was within that file, there was one piece of paper that was to do with any of these issues, the whole file went through the process.

Q. All right. So it would be fair to say, then, that if a document was found in a file along with its attachments, the document and all of the attachments would have been produced to the plaintiff?

A. It was inviolate. The file was not touched. It was kept together.

Q. Who made sure that that happened, that they -- that pieces weren't taken out?

A. Well that was the collective responsibility of all concerned in the process, with myself as, I suppose, the ultimate person with responsibility.

Q. Well sir, technically you weren't even with the company when most of this work was done; were you?

A. You're quite right. But obviously since the time I joined.

Q. All right. But before that who was the person

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ultimately responsible for making sure that documents weren't taken apart?

A. Well again, we'd have to go back through different phases of this. If we're going back to the 1986 phase, for example, I -- I'm -- I'm guessing, I suppose the company solicitor and secretary at that time would have ultimate responsibility.

Q. And who was that?

A. That would have been a chap called Richard Baker. Actually there's -- there's probably one or two people. The -- the times get confused. Maybe Nick Cannar. There was one or two people changing in that position around that period.

Q. And for B.A.T Industries, would it have been David Wilson?

A. Well B.A.T Industries was a bit later on. At that time --

Yes, I think it would have been David Wilson with -- with, obviously, Lovell White Durrant.

Q. All right. Now when the file was copied, were instructions given to the copier to file of every single -- copy every single piece of the file?

A. Absolutely.

Q. So if we have a document that begins at Bates number 107463454, such as Exhibit 490, and ends with

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Bates number 530, it would be safe to assume that this is the entire file.

A. It certainly should be, yes.

MS. McGARRY: The entire file?

MS. WIVELL: Yes.

Q. Shouldn't it?

A. I'm sorry, the entire --

It may not be a file, it may just be a document. I mean the -- the -- the Bates numbering was done -- should -- it should be -- we can't assume it's the same file, because we --

I don't know where the Bates range would begin and end on a particular file. We'd have to check that from one of the indexes that we gave you.

Q. Just a moment, please.

(Discussion between Ms. Wivell and Mr. Moccio.)

Q. We could assume, then, that it would be a complete document.

A. It should be a complete document.

Q. Thank you.

So that if we were to come up with a document that ends with an incomplete sentence, but that's the way it was produced to us, that would be the way it was found in the file; right?

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A. Most likely, yes.
Q. Would it be correct to say that every document produced by defendants in this case -- strike that.
Would it be fair to say that every document produced by the BAT Group defendants in this case was produced exactly as it was originally kept in defendants' files?
A. That was certainly our intention and it certainly should be the case.
Sorry. Subject to the qualification of the privilege and the trade-secret stuff being removed for separate disclosure, or non-disclosure, as the case may be.
Q. Is defendants' privilege log done?
A. I believe it is, yes.
Q. And by that I mean the privilege log for B.A.T Industries, BATCO and BATUKE is complete; right?
A. That's what I understand, yes.
Q. We won't be getting any amendments or additions.
A. I can't guarantee that, because as part of our due diligence we're still, you know, checking out documents, as -- as you well know. So I can't rule it out. But I think we'll all keep our fingers crossed that it's done.
Q. Where did the documents that were produced to

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the plaintiff this month come from?

A. This --

They came from -- I think I was wrong first when -- before lunch. They came from both BATCO and B.A.T Industries.

Q. But what's --

What particular set of files did those documents come from?

A. They were indiscriminate. It wasn't a particular set of files.

Q. These were just documents that were missed the first time through; is that right?

A. Not quite. There was -- there was really two --

There's really two categories. Some of those documents were documents that had originally been designated as -- as privileged, and then upon further review they were deemed to be non-privileged. And then the -- the other part of those documents were -- were -- were part -- were -- arose from a more thorough ongoing audit and due diligence that was taking place whereby we did -- whereby files that had originally been determined not to be relevant to the issues were then determined to be relevant.

Q. And sir, you understand that 34 new boxes of documents were produced to plaintiffs this month;

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don't you?
A. About 295 files, yes, if that's the same.
Q. That had never been produced before.
A. For the reasons I've given, yes.
Q. Now sir, are you aware that from time to time documents were produced with handwritten notes in the margins of the documents?
A. I think that's right, yes.
Q. All right. Were those notes placed on the documents during the production process?
A. Certainly not, no.
Q. So if documents were produced with handwritten notes on them, that was the way they were found in B.A.T Industries, BATCO or BATUKE's files.
A. That should be the case, yes.
Q. Do you know of any exceptions where it's not the case?
A. No, I don't.
Q. So if a document was produced that includes handwritten notes or marginalia, it was produced as it was found in one of the three BAT Group defendants' files in the ordinary course of their business; right?
A. As I've said, that certainly should be the case, yes.

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Q. In addition to the active files of the companies, were there any other locations that were searched for responsive documents?
A. Above and beyond which particular locations are you thinking of?
Q. All right. The main headquarters of B.A.T Industries, the main headquarters of the research areas of BATCO, and the research areas and main headquarters of BATUKE.
A. Yes, there were -- there were other areas, yes.
Q. What other areas were searched?
A. We've described those other areas in -- in one of our responses. There were the areas where documents were stored externally; there was a site at Winnall, W-i-n-n-a-l-l; there was -- I mentioned already the B.A.T Industries data management facility; there was Colby in Northampton in England, which is another site; and one -- one or two others which I can't recall but which are specified in one of our responses.
Q. Are there any other sites that were reviewed for responsive documents?
A. The only other --
The only other instance I can think of is -- is regards B.A.T Industries, where we made sure that

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non-executive directors who didn't have an office at Windsor House, we -- we picked up their files as well.

Q. If a person had left the company, what efforts were done to ascertain whether they took documents with them which might have been responsive to plaintiffs' requests?

A. We didn't chase the -- the left individual. We --

The assumption was made, I think properly, that all their files would be retained as we would expect them to do when they left the company. There should be no reason why they should take them with them.

Q. Well we know that Mr. I. W. Hughes, when he left London, took files to Brown & Williamson with him; correct?

A. Apparently, yes. Yes.

Q. That's disclosed in one of the responses.

A. That's right. Yes.

Q. All right. So we know of at least one example where documents were taken from either B.A.T Industries, BATCO or BATUKE to Brown & Williamson; correct?

A. We do, yes.

Q. All right. Do we know of any other examples?

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A. No, we don't, no.
Q. All right. Were the offices of defendants' outside counsel searched for responsive documents?
A. Certainly our --
"Search" is too strong a word. Certainly inquiry was made of outside counsel whether they had any documents which were otherwise held, yes.
Q. Who was that inquiry made of?
A. Lovell White Durrant, and I believe also Simpson Thacher.
Q. Anyone else?
A. No.
Q. Is that inquiry complete?
A. I believe it is, yes. Yes.
Q. Did any of the lawyers who are outside counsel for B.A.T Industries, BATCO or BATUKE, have in their possession any documents which were not in the possession of one of the three of the BAT Group defendants?
A. I don't think any of them did, no.
Q. Do you know for sure?
A. Not a hundred percent sure. I can --
I really cannot think of any instance, and I did make the inquiry, where it was reported back to me.
Q. At any time were documents sent elsewhere so

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they would not be produced in this case?
A. Certainly not.
Q. Categorically not; right?
A. Right.
Q. Do B.A.T Industries, BATCO and BATUKE maintain an archive of smoking-related documents?
A. They maintain an archive, full stop, not specifically -- I said "full stop," period -- not specifically smoking-and-health archive.
Q. What do you mean by "They maintain an archive, not specifically a smoking-and-health archive?"
A. Well we have --
We have an archive facility for files no longer currently needed --
Q. (Coughing.) Pardon me.
A. -- no longer currently needed for day-to-day business which is stored in Guildford now, and some in Southampton.
Q. I'm not sure that I'm making myself clear. Is there a complete set of smoking-and-health-related documents stored somewhere?
A. Oh, no, not a complete set, no. This is just an additional load of documents which are stored outside the -- the particular offices because they're no longer needed, and we searched those as well.

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Q. If I were to give you an organizational chart for BATUKE and ask you if -- page by page by page if all of the files of that organization had been searched, what would your response be?
A. I'd be very confident that we've, you know, done our level best to pick up every piece of paper that was in the possession of BATUKE at the relevant time.
Q. Are there any past outside counsel who used to represent B.A.T Industries, BATCO or BATUKE whose files were not checked for responsive documents?
A. Well I'm sure there were outside counsel who represented all or any of those entities and for various purposes. There was certainly no such counsel that we felt would have anything to do with the -- the present litigation.
Q. Just so you're clear --

Just so we're clear, were former employees asked if they had any responsive documents?
A. As a general rule, no. And I don't think as even a specific instance. No, they weren't.
Q. Can you think of any instance where any former employee was asked if she or he had responsive smoking-and-health-related documents?
A. I can't think of an instance, no.
Q. Do you know what the TRC is?

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A. Yes, I believe I do, yes.
Q. What is the TRC?
A. I think it's Tobacco Research Committee.
Q. All right. You understand that B.A.T Industries, BATCO and BATUKE took part in the TRC?
MS. McGARRY: Objection.
A. I'm -- I'm not sure who was part of it. I have a vague recollection of what it's about.
Q. Was the TRC asked if they had any documents responsive to plaintiffs' requests for production?
A. No, it wasn't, no.
Q. From time to time B.A.T Industries, BATCO or BATUKE have used consulting laboratories outside their own facilities to do smoking-and-health-related research; correct?
MS. McGARRY: Objection.
A. Correct.
MS. McGARRY: You may answer.
Q. Did the defendants, the BAT Group defendants ask any of the consulting laboratories, either foreign or domestic, whether they had any documents responsive to plaintiffs' requests for smoking-and-health documents?
A. I don't believe we did, no.
Q. Just so we're clear here, Battelle Geneva was

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not asked if they had responsive documents relating to smoking and health?

A. Not to my knowledge.

Q. Was Wickham Labs asked if they had documents relating to smoking and health?

A. Not to my knowledge.

Q. Were any of defendants' experts asked if they had any documents relating to smoking and health which had not been produced?

A. Which experts?

Q. You checked those, you said?

A. I said "Which experts?"

Q. Oh, I'm sorry.

Experts that defendant has listed in smoking-and-health-related cases.

A. No, I don't think so.

Q. Has -- or I'm sorry.

From time to time B.A.T Industries, BATCO or BATUKE have used consultants in smoking-and-health-related cases; correct?

A. I believe so.

MS. McGARRY: Objection.

THE WITNESS: Sorry.

MS. McGARRY: Compound. Go ahead.

A. I believe so, from time to time.

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Q. All right. Were those consultants asked if they had any documents relating to smoking-and-health cases?

A. Not to my knowledge.

Q. Now from time to time defendants have used public-relations firms; correct?

MS. McGARRY: Objection, compound.

A. I believe so.

Q. All right. Were the public-relations firms used by the BAT Group companies asked if they had any documents relating to smoking-and-health issues?

A. Not to my knowledge they were.

Q. Did B.A.T Industries, BATCO or BATUKE send documents to Brown & Williamson so they could be produced in this case?

A. The question was did -- did those entities send documents to Brown & Williamson.

Q. Yes. After this case was filed, so that Brown & Williamson could produce those documents in this case.

A. So Brown & Williamson could. I don't believe so, no.

Q. Do you know one way or the other, sir?

A. Well my -- I -- my answer is to --

To my knowledge, the answer is no.

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Q. The three BAT Group defendants that we're talking about here today use accountants; don't they, sir?
A. I'm sure they do, yes.
Q. Were the accountants asked whether they had any documents which related to smoking and health?
A. No, I don't think so.
Q. Now there are former officers of B.A.T Industries, BATCO and BATUKE; correct?
A. Yes, I'm sure. Yes.
Q. Were they asked whether they had any documents relating to smoking and health?
A. No, they weren't, no.
Q. From time to time the BAT Group defendants have used marketing organizations to promote their tobacco products; correct?
A. That's right.
MS. McGARRY: Objection, compound.
A. I think that's right.
Q. Were those marketing organizations asked if they had any documents relating to smoking and health?
A. I don't believe so, no.
Q. We've already established that the flavor houses were not asked; right?
A. That's correct.

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Q. Do B.A.T Industries, BATCO or BATUKE have a risk management department?

MS. McGARRY: Objection, compound.

A. I'm not aware of a department called risk management, no, in any -- in any of the organizations.

THE WITNESS: I think I'd like to take a break now, if I may.

MS. WIVELL: Oh, certainly. I'm sorry.

THE REPORTER: Off the record, please.

(Recess taken.)

BY MS. WIVELL:

Q. Sir, could you look at the second page of Exhibit 489, which I believe is before you.

A. Before I do that, can I pick up on two points on some earlier discussions?

Q. Certainly, sir.

A. The first point is regarding the Broach memorandum, if you recall, that was one of the overheads that we discussed --

Q. Yes, sir.

A. -- on the presentation. I'm --

We now found out that in fact the Broach memorandum itself has been produced --

Q. Ah.

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A. -- into Guildford, and in fact plaintiffs have looked at that particular file.
Q. Okay. But it was produced into the Guildford depository and is there; correct?
A. That's correct.
Q. Okay.
A. The second point I wanted to raise was when you were asking me about any discussions with former employees and I said I didn't think there had been any, I've now been reminded that as regard these Rev A missing files which we discussed some time ago, as part of the due diligence as to where are they, where we could track down any former employees who might be able to help on that issue, we did so, and spoke to them.
Q. And who did that?
A. That was the -- the --
Well the Lovell White/Simpson Thacher team. I don't know specifically which individual.
Q. Sir, what file is that Carter Broach memo in?
A. I believe the number is 0741.
Q. Thank you.
MS. McGARRY: It's AC0841. It was a file you selected documents from, but not that document.
MS. WIVELL: Thank you.

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Q. Now sir, do you have Exhibit 489 in front of you?
A. I do.
Q. All right. Would you turn to the second page.
A. Yes.
Q. There under "PRINCIPAL ACCOUNTABILITIES," under point five it says, "Co-ordinate and edit all contributions from research scientists for the publication of a monthly bulletin for circulation internally and to associated companies." Do you see that, sir?
A. Yes, indeed.
Q. All right. What monthly bulletin does this refer to?
A. I don't know specifically. This is another job description. I can only speculate that it may have been one of the -- the INTERBAT bulletins.
THE REPORTER: Just a moment, please.
Go ahead.
BY MS. WIVELL:
Q. Do you know if it's an INTERBAT bulletin?
A. Not for sure, no.
Q. All right. Could you find out and report to us in writing after the end of this deposition?
A. I can certainly try that, yes.

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Q. Thank you.

And if not, would you find out whether those monthly bulletins were produced to plaintiffs?

A. Certainly.

Q. Thank you.

Now sir, have any documents concerning the purchase of American Tobacco Company been produced to plaintiffs?

A. I don't know specifically. The files --

If they would be in the files of the three entities, they would have been produced.

Q. Well you understand that B.A.T Industries purchased American Tobacco Company and then merged it with Brown & Williamson; correct?

MS. McGARRY: Objection, assumes facts not in evidence.

You may answer.

A. I don't think that's correct. I think Brown & Williamson purchased American Tobacco.

Q. Do you know for sure?

A. Yes, I do.

Q. And it's your testimony that Brown & Williamson purchased American Tobacco.

A. That's right.

Q. Now did Brown & Williamson make regular status

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reports to B.A.T Industries?

A. What kind of status report?

Q. Status reports of activities that were going on in the company.

A. I don't know for sure what kind of reporting arrangements there were between the two, no.

Q. All right. Do you know if --

So you can't tell us whether regular status reports were made, and, if so, whether they were produced to plaintiffs in the Guildford depository.

A. No, I can't, because I think that's a -- a very broad description. I'm sure there was some communication, but I have no idea what it was.

Q. Sir, from time to time at the Guildford depository plaintiffs would encounter empty folders or completely empty boxes. Can you explain why that occurred?

A. I think it --

Well there may be several explanations. The -- the files or the papers within those boxes which were originally marked would have been withdrawn, perhaps for privilege or trade secret, is the most obvious. Above and beyond that I can only think that in -- I think in some cases we had a situation where there was -- or there was literally a blank file, it was

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a -- a folder with something on the outside and nothing on the inside.

Q. Now you mentioned documents being withdrawn for privilege or trade secret.

A. That's right.

Q. I understand that privilege claims have been made for documents. Do you understand that documents were withheld because they contained trade secrets?

A. No.

MS. McGARRY: Object to the form of the question.

A. No. If that was the impression I gave, that is completely incorrect. They were -- they were produced under different circumstances. They weren't kept in the -- the files from which they first came.

Q. When you referred to documents which were withdrawn for trade secrets, are you referring to documents that were then later produced as Category II documents?

A. Or Category I, or just Confidential, yes. There were three designations.

Q. All right. But the documents that you referred to as trade secret would have been produced under one of those three categories.

A. That's right.

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Q. Do the BAT Group defendants have a computerized document-by-document index?
A. I don't believe they do, no.
Q. Do they have a computerized document-by-document database?
A. I don't believe we do, no.
Q. If so --
Or if not, how did you locate the Carter Broach memo so quickly during the break?
A. The --
I think the answer to that is we can -- we can be lucky in terms of, in a summary of a file, the -- we may be lucky and have a particular document itemized. In other cases, documents from a particular file are not mentioned specifically.
Q. Did you check to find the Carter Broach memo on the Rev A or B?
A. I don't know what database was checked.
Q. Who made the privilege determinations about whether a document should be withheld from plaintiffs?
A. Several people. The -- the first determinations --
Well it was a combination of -- of Lovell White Durrant and Simpson Thacher.

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Q. Lawyers?
A. Indeed, yes.
Q. Not legal assistants.
A. I think in the first instance legal assistants assisted, but certainly the final calls were -- were made by lawyers, as I understand.
Q. Were written instructions given to the people who made the first call?
A. I -- I don't know for a fact.
Q. Were written instructions given to the people who made the final call on privilege?
A. I don't know for a fact either.
Q. Who was involved in making the final privilege call?
A. A joint team of -- of Lovell's and Simpson Thacher lawyers.
Q. Who was on that team?
A. From Lovell's it was primarily Jeremy Marshall, and I know that Pat Bonner and one or two others from Simpson Thacher whose names I -- I don't actually recall were involved in the final call.
Q. Since you're going to give us a list of names from earlier questions, would you agree to provide us with a complete list of names of all of the people who made the final privilege calls after this

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deposition is over?

MS. McGARRY: I have to think about whether I'll let Mr. Gilbey do that.

MS. WIVELL: Well we can take a break and you could ask counsel, or we can agree that you'll provide that list.

MS. McGARRY: I haven't decided whether I'm going to assert privilege as to it. I'm not sure I'll be able to determine it over the break.

MS. WIVELL: Well it's my understanding that you have not asserted privilege as to the names so far, so I believe that there would be a waiver. I'm just trying to find the -- the most expedient way.

MS. McGARRY: Well if I can take --

MS. WIVELL: Would you like a moment?

MS. McGARRY: No. I think we can just agree if I decide not to assert privilege, we'll get the information listed for you. If I decide to assert privilege, I'll inform you of that. I don't think we should waste Mr. Gilbey's time.

MS. WIVELL: Well I think I'm entitled to an answer. I have received a partial answer. I'd like a complete answer. And I would either like an agreement that that will be provided, or we can take

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the time and you can find out the answer from counsel. I'm just trying to give you your -- your preference so that we can finish up here and move on.

MS. McGARRY: I gave you your answer, Martha. Let's move on.

MS. WIVELL: So the answer is you'll think about it and let me know; is that right?

MS. McGARRY: Uh-huh. I'll certainly let you know before the deposition is over.

BY MS. WIVELL:

Q. Was there any quality checking to check the correctness of the privilege decisions?

MS. McGARRY: Just answer that "yes" or "no." We're getting into work-product areas.

A. Yes, there was.

Q. What type of quality checking was done to assure that improper assertions of privilege were not made?

MS. McGARRY: I'm going to direct the witness not to answer on the grounds of work product.

Q. If there was a dispute between the reviewer and the quality control person, was there an arbiter who made the final decision about whether a document was privileged or not?

MS. McGARRY: I'm going to assert

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work-product protection and instruct the witness not to answer.

Q. In addition to work product and privilege, were there any other reasons that documents were withheld from production?

A. Only on the basis of the -- the -- the carved-out areas agreed upon with plaintiffs.

Q. And have all parts of defendants' privilege log been produced?

MS. McGARRY: Objection, asked and answered.

A. I think I said earlier that my belief is that, yes, it has.

Q. Now from time to time plaintiffs received certain documents in this case to which redactions were made. Who did those redactions?

A. I don't know, of the generic set, who did those.

Q. Were they made by lawyers?

A. I believe so.

Q. By whom were the lawyers employed?

A. I don't know. I -- I would speculate that it would have been Lovell White or Simpson Thacher.

Q. You just don't know as you sit here; right?

A. No, I don't.

Q. Did legal assistants make any of the redaction

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decisions?
A. I don't believe so, no.
Q. Were the documents that were produced to plaintiffs produced as they were organized in the files of the defendants?
A. Yes, they were.
Q. So the documents were produced as they were kept in the ordinary course of business at the time plaintiffs made the request?
A. I believe so. That's not to say there was -- there was no mishap on -- on the copying, but that was certainly the intention.

MS. WIVELL: Well I'm about to conclude this deposition and I'd like to know what your decision is about that one question.

MS. McGARRY: I'm going to ask Mr. Gilbey some questions, and I'm going to have to take a note -- a break to go over my notes to see if there's anything I missed. So we'll let you know before we're done for the day.

MS. WIVELL: Thank you. So I have nothing further.

MS. McGARRY: Thank you.

THE REPORTER: Off the record, please.

MS. McGARRY: No, I can continue right now

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and we can take a break later.

THE REPORTER: Okay.

MS. McGARRY: Did you take the original exhibits?

THE REPORTER: I did.

They're in order.

MS. McGARRY: Thank you.

REDIRECT EXAMINATION

BY MS. McGARRY:

Q. Mr. Gilbey, I'm showing you what was marked as Plaintiffs' Exhibit 475, the corrected supplemental amended responses of B.A.T Industries to Plaintiffs' interrogatories relating to document destruction. I believe that when Ms. Wivell was asking you about this document, or the uncorrected version of it that's Exhibit 474, she asked you whether all of the documents identified in that response were in existence in 1986 at the time of Project Discovery. Do you recall that exchange?

A. Yes, I do.

MS. WIVELL: Objection.

MS. McGARRY: All right. Why don't we finish my question before you answer, and then also before Ms. Wivell objects.

Q. Do you recall that exchange?

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A. I do, yes.
Q. Is that a correct statement?
A. On reflection it's not, no.
Q. What were you referring to when you mentioned documents that were in existence in 1986?
A. I was confusing the documents specified in this document with the missing Rev A documents that were referenced in other documents.
Q. Were all the documents identified in Exhibit 475 in existence prior to the beginning of Project Discovery in 1986?
A. It doesn't --
Q. Immediately prior to? Excuse me.
A. It doesn't appear likely that they were, no.
Q. Ms. Wivell asked you about various databases and asked you whether any of those had been created prior to 1994. Do you recall that?
A. I do, yes.
Q. Is it correct that IVDI was created prior to this litigation in 1994, as you testified?
MS. WIVELL: Objection.
A. It isn't correct, no.
Q. When was IVDI -- I'm sorry.
When was IVDI created with respect to this litigation, before or after it began?

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A. It was after.
Q. Was the CDIS database that you testified about created before or after this litigation?
A. I believe that --
MS. WIVELL: Objection.
A. I believe that database was created before.
Q. When you were describing the production of B.A.T Industries files for Ms. Wivell, you made reference to an audit that was conducted in the spring of 1997 that led to the discovery of additional files that had to be produced; is that correct?
MS. WIVELL: Objection.
A. That's correct.
Q. Do you recall whether or not any such audit was done for the files of BATCO and BATUKE?
A. I don't recall specifically. I -- I -- I believe that the -- the audit process covered the three entities.
MS. McGARRY: Why don't we take a break and I'll go over my notes and see if there's anything else I have to ask Mr. Gilbey, and I'll get back to you on that question. Should be about five, 10 minutes maximum.
MS. WIVELL: That's fine.
THE REPORTER: Off the record, please.

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(Recess taken.)

MS. McGARRY: Okay, Ms. Wivell, I've considered that matter, and we will provide you, along with a list of other people you've asked for, the list of people who were involved in the privilege review.

MS. WIVELL: Thank you.

BY MS. McGARRY:

Q. Mr. Gilbey, do you recall being questioned about production of the Lotus databases?

A. Yes, I do, yes.

Q. Were all the Lotus databases made available to plaintiffs in this case?

A. Yes, I think they were. There was correspondence dealing with that and we explained what the various databases were. I think we gave details, indeed extracts of -- of a good number of those, and plaintiffs decided which of those they were interested in, yes.

Q. Can you describe how Category II files are maintained in the Guildford depository? Strike that.

Can you describe how Category II documents are maintained in the Guildford depository?

A. As I said earlier, they're -- they're maintained separate from the -- the files from which they came.

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They're kept separately in a secure room in -- in the Guildford building.

Q. So they were removed from the file that they came from originally; is that correct?

A. That's right.

MS. WIVELL: Objection.

Q. Can you tell me whether or not they are produced in any files in the room within the Guildford depository?

A. Indeed. The documents where they're extracted from, if I may call it their parent file, are put in another file bearing the same number as the file from which they came and kept that way.

Q. Thank you.

I'm showing you what was previously marked Plaintiffs' Exhibit 475 and referring you to page eight, the answer at the very top of the page relating to the videotape. Have you had a chance to review the first paragraph on that page?

A. Yes, I have.

Q. Do you remember your testimony about that videotape?

A. I think I do, yes.

Q. Can you tell me whether or not Benelux has a copy of the videotape?

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A. The answer is I don't know.
Q. Do you know whether Benelux destroyed its copy of the videotape?
A. I don't know that.
Q. I'm showing you what was previously marked Plaintiffs' Exhibit 476. Turning to page 11, can you please read to yourself the answer at paragraph 2.A.
A. Yes, I've read that.
Q. 2.A. refers to certain files; is that correct?
A. Yes.
Q. Do you know which of the BAT Group company files those files are?
A. Yes, I do. They are in fact all files relating to BATCO.
Q. I'd like to go back to some questions and answers from this morning, and I'll just read to you the transcript as we have it. Ms. Wivell asked: "Could it -- Would it" --

No, let me --

"Could it would be fair to say, wouldn't it, sir, that you cannot tell me as you sit here today that all responsive documents in defendant B.A.T Industries' files were produced that were responsive?"

And your answer to that is "No."

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Do you recall that testimony?
A. Yes.
Q. Could you explain your answer.
A. I can explain my answer in terms of saying that it's quite impossible, to be categoric, that all responsive files were produced. I can elaborate by saying that I'm very happy that a lot of hard work and due diligence went into this to make sure that any file that potentially had responsive documents in it was produced, but to be categorical that we picked up every single file or piece of paper is just impossible to say.

MS. McGARRY: I have no further questions.

RECROSS-EXAMINATION

BY MS. WIVELL:
Q. Mr. Gilbey, do you recall counsel asking you as part of her direct examination about Exhibit 475?
A. Yes, I do.
Q. And you corrected your answer; right?
A. Let me just get to which one we're talking about, please. This is the Benelux tape, I believe.
Q. No. I think it had to do with the issue of when I asked you whether all the documents referred to in there were in existence in 1986. Do you recall that?
A. I do, yeah.

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Q. And you, quote, unquote, corrected your answer; didn't you, sir?
A. That's right, yes.
Q. And you did that after counsel had spoken to you about the implications of your answer; isn't that true?
A. I don't --
MS. McGARRY: I object to the form of the question.
A. No, that's completely incorrect. No, I was actually confusing two issues. I was confusing this particular interrogatory with the -- the responses that we'd given as regards the missing Rev A documents.
Q. Move to strike as non-responsive.
My question is, sir: You corrected that answer after counsel had talked with you about your answer; isn't that true, sir?
MS. McGARRY: That's a different question, and Mr. Gilbey's previous answer was most certainly responsive.
You may answer this question.
A. No.
Q. You didn't while you were on break talk about your answer with counsel? Is that your testimony,

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sir?

A. No, that's not my testimony, no. My -- my testimony is that it was pointed out to me that I'd confused two separate issues. And that's absolutely correct, I had.

Q. And this was pointed out to you by one of the four lawyers who are sitting next to you here today representing B.A.T Industries, BATCO and BATUKE; correct?

A. That's correct.

Q. All right. And as a matter of fact, when you gave additional answers regarding the IVDI database, that was after counsel had pointed out to you something about your answer; correct?

A. That it was factually incorrect, yes.

Q. And in fact, sir, the information you gave about the CDIS database that you corrected in response to counsel's question was also corrected after you had had a chance to chat with attorneys for B.A.T Industries, BATCO and BATUKE; correct?

A. Yes. I'd confused the two databases.

Q. But just so --

Just so the record is clear, these corrections occurred after you had spoken with counsel for B.A.T Industries, BATCO and BATUKE; correct?

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A. Yes.
Q. All right. Sir, there is some question about this tape that was sent by Mr. Colin Greig to Benelux; right?
A. Yes.
Q. And you're telling me that B.A.T Industries hasn't asked its subsidiary whether it has a copy of that tape. Is that what you're telling us?
A. That's right, yes. I'm not aware that we asked the subsidiary, no.
Q. So you just can't tell us as you sit here today one way or the other whether that tape was erased as Mr. Colin Greig directed.
A. Exactly.
Q. Now counsel asked you questions from Exhibit 476 regarding documents and files that cannot be located; right?
A. Yes.
Q. And she directed you to page 2.A. on page -- I'm sorry, page 11, answer 2.A.; correct?
A. Correct.
Q. Now she very carefully did not ask you to read that response; did she?
A. I don't think she did, no.
MS. McGARRY: Objection.

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Q. Would you please read the response that's given there on 2.A. concerning these documents.

A. "On April 1, 1996, B.A.T Industries responded to plaintiffs' Fourth Set of Interrogatories relating to missing files and computer disks. B.A.T Industries responded at that time that 207 paper files, 383 computer disk files and 411 computer disks were missing and could not be located. Those files and computer disks have not been located as of this date."

Q. And as we sit here today, those documents have not been located; have they?

A. No, they haven't, no.

Q. And those documents were documents from B.A.T Industries files; weren't they?

A. No, they weren't.

Q. They were not.

A. They weren't, no.

Q. But those computer disks, paper files and computer disk files are still missing; correct?

A. That's correct. That was my confusion with the -- the other interrogatories. These are the missing Rev A files.

MS. WIVELL: I have nothing further.

MS. McGARRY: Okay. Just to recross the

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witness.

RE-REDIRECT EXAMINATION

BY MS. McGARRY:

Q. Mr. Gilbey, are all answers you gave on my examination this afternoon true?

A. I believe so, yes.

Q. What was your purpose in giving corrected answers?

A. To make sure the record was accurate.

MS. McGARRY: Thank you. I have nothing further.

MS. WIVELL: I have nothing further.

THE REPORTER: Off the record, please.

MS. WIVELL: Ah, no. Before we go off, I would like the witness to read and sign.

MS. McGARRY: Oh, he's going to -- definitely going to read and sign.

THE REPORTER: Off the record, please.

(Deposition concluded at 5:24 o'clock p.m.)

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C E R T I F I C A T E

I, Richard G. Stirewalt, hereby certify that I am qualified as a verbatim shorthand reporter; that I took in stenographic shorthand the testimony of MARTYN C. GILBEY at the time and place aforesaid; and that the foregoing transcript consisting of pages 1 through 285 is a true and correct, full and complete transcription of said shorthand notes, to the best of my ability.

Dated at London, England, this 21st day of July, 1997.

RICHARD G. STIREWALT
Registered Professional Reporter
Notary Public

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C E R T I F I C A T E

I, MARTYN C. GILBEY, the deponent, hereby certify that I have read the foregoing transcript consisting of pages 1 through 285, and that said transcript is a true and correct, full and complete transcription of my deposition except:

MARTYN C. GILBEY

Deponent

Sworn and subscribed to before me this day of , 1997.

Notary Public

My commission expires .

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